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Legislative History – Montana Session Law

Chapter:643 Session L: 2023

Bill Number: SB 38

Checklist of Bill History

History and Final Status Sheet	☑
Introduced Bill	☑
Fiscal Note	☐
Third Reading Bill	☐
Final Version of Bill	☐

House	**Senate**
Committee: Judiciary	Committee: Judiciary
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Conference Committee

Hearing Date(s):

Conference Committee Report:

Compiler Notes

Compiled by: SK Marshall

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Notes: Audio/Video recordings can be found here: https://sg001-harmony.sliq.net/00309/Harmony/en

Thank You!

AN ACT GENERALLY REVISING STATUTES RELATED TO LEVEL DESIGNATIONS FOR SEXUAL OFFENDERS; PROVIDING DEFINITIONS; REQUIRING ADDITIONAL INFORMATION FROM OFFENDERS REGARDING ELECTRONIC AND COMMUNICATIONS DATA AND PROFESSIONAL LICENSES; REQUIRING NOTICE WHEN AN OFFENDER IS LEAVING THE STATE; PROVIDING OPPORTUNITIES FOR CERTAIN OFFENDERS TO BE REMOVED FROM THE REGISTRY; PROVIDING NOTICE REQUIREMENTS FOR PSYCHOSEXUAL EVALUATIONS; AND AMENDING SECTIONS 46-23-502, 46-23-504, 46-23-505, 46-23-506, 46-23-508, AND 46-23-509, MCA.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 46-23-502, MCA, is amended to read:

"**46-23-502. Definitions.** As used in Title 45, chapter 5, part 3 and parts 5 through 7, 46-18-255, and this part, the following definitions apply:

(1) "Department" means the department of corrections provided for in 2-15-2301.

(2) "Foreign offenses" means a conviction for a sexual offense involving any of the conduct listed in this section that was obtained under the laws of Canada, the United Kingdom, Australia, or New Zealand, or under the laws of any foreign country when the United States department of state, in its country reports on human rights practices, has concluded that an independent judiciary generally or vigorously enforced the right to a fair trial in that country during the year in which the conviction occurred.

~~(2)~~(3) "Mental abnormality" means a congenital or acquired condition that affects the mental, emotional, or volitional capacity of a person in a manner that predisposes the person to the commission of one or more sexual offenses to a degree that makes the person a menace to the health and safety of other persons.

~~(3)~~(4) "Municipality" means an entity that has incorporated as a city or town.

~~(4)~~(5) "Personality disorder" means a personality disorder as defined in the fourth edition of the

Diagnostic and Statistical Manual of Mental Disorders adopted by the American psychiatric association.

~~(5)~~(6) "Predatory sexual offense" means a sexual offense committed against a stranger or against a person with whom a relationship has been established or furthered for the primary purpose of victimization.

~~(6)~~(7) "Registration agency" means:

(a) if the offender resides in a municipality, the police department of that municipality; or

(b) if the offender resides in a place other than a municipality, the sheriff's office of the county in which the offender resides.

~~(7)~~(8) (a) "Residence" means the location at which a person regularly resides, regardless of the number of days or nights spent at that location, that can be located by a street address, including a house, apartment building, motel, hotel, or recreational or other vehicle.

(b) The term does not mean a homeless shelter.

~~(8)~~(9) "Sexual offender evaluator" means a person qualified under rules established by the department to conduct psychosexual evaluations of sexual offenders and sexually violent predators.

~~(9)~~(10) (a) "Sexual offense" means~~:~~ any violation, attempt, solicitation, or conspiracy to commit a violation, or flight after the attempt or commission of the following:

~~(a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-301 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-302 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-303 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-502 (if the offender is a professional licensed under Title 37 and commits the offense during any treatment, consultation, interview, or evaluation of a person's physical or mental condition, ailment, disease, or injury), 45-5-502 (3) (if the victim is less than 16 years of age and the offender is 3 or more years older than the victim), 45-5-503 (1), (3), or (4), 45-5-504 (2)(c), 45-5-504 (3) (if the victim is less than 16 years of age and the offender is 4 or more years older than the victim), 45-5-507 (if the victim is less than 18 years of age and the offender is 3 or more years older than the victim or if the victim is 12 years of age or younger and the offender is 18 years of age or older at the time of the offense), 45-5-508, 45-5-601 (3), 45-5-602 (3), 45-5-603 (1)(b), (2)(b), or (2)(c), 45-5-625, 45-5-704, or 45-5-705 ; or~~

(i) 45-5-301, Unlawful restraint, if the victim is less than 18 years of age and the offender is not a parent of the victim;

(ii) 45-5-302, Kidnapping, if the victim is less than 18 years of age and the offender is not a parent of the victim;

(iii) 45-5-303, Aggravated kidnapping, if the victim is less than 18 years of age and the offender is not a parent of the victim;

(iv) 45-5-502(2)(c) and (3), Sexual assault;

(v) 45-5-503, Sexual intercourse without consent;

(vi) 45-5-504(2)(c) and (3), Indecent exposure;

(vii) 45-5-507, Incest, if the victim is less than 18 years of age and the offender is 3 or more years older than the victim, or if the victim is 12 years of age or younger and the offender is 18 years of age or older at the time of the offense;

(viii) 45-5-508, Aggravated sexual intercourse without consent;

(ix) 45-5-601(2)(b), (3), and (4) Prostitution;

(x) 45-5-602(3) and (4), Promoting prostitution;

(xi) 45-5-603, Aggravated promotion of prostitution;

(xii) 45-5-622(2)(b)(ii), Endangering welfare of children;

(xiii) 45-5-625, Sexual abuse of children;

(xiv) 45-5-627(1)(a), Ritual abuse of minor;

(xv) 45-5-704, Sexual servitude;

(xvi) 45-5-705, Patronizing victim of sexual servitude; or

~~(b)~~(xvii) any violation of a law of another state, a tribal government, ~~or~~ the federal government, or the military or a foreign entity that is reasonably equivalent to a violation listed in subsection ~~(9)(a)~~ (10)(a)(i) through (10)(a)(xvi) or for which the offender was required to register as a sexual offender after an adjudication or conviction.

(b) This term does not include the exceptions provided for in 45-5-501, 45-5-502, and 45-5-503.

~~(10)~~(11) "Sexual or violent offender" means a person who has been convicted of or, in youth court, found to have committed or been adjudicated for a sexual or violent offense.

~~(11)~~(12) "Sexually violent predator" means a person who:

(a) has been convicted of or, in youth court, found to have committed or been adjudicated for a

sexual offense and who suffers from a mental abnormality or a personality disorder that makes the person likely to engage in predatory sexual offenses; or

(b) has been convicted of a sexual offense against a victim 12 years of age or younger and the offender is 18 years of age or older.

~~(12)~~(13) "Transient" means an offender who has no residence.

~~(13)~~(14) "Violent offense" means:

(a) any violation of or attempt, solicitation, or conspiracy to commit a violation of:

(i) 45-5-102, Deliberate homicide;

(ii) 45-5-103, Mitigated deliberate homicide;

(iii) 45-5-202, Aggravated assault;

(iv) 45-5-206 (third or subsequent offense), Partner or family member assault;

(v) 45-5-210(1)(b), (1)(c), or (1)(d), Assault on a peace officer or judicial officer;

(vi) 45-5-212, Assault on a minor;

(vii) 45-5-213, Assault with weapon;

(viii) 45-5-215, Strangulation of partner or family member;

(ix) 45-5-302 (if the victim is not a minor), Kidnapping;

(x) 45-5-303 (if the victim is not a minor), Aggravated kidnapping;

(xi) 45-5-401, Robbery;

(xii) 45-6-103, Arson; or

(xiii) 45-9-132, Operation of unlawful clandestine laboratory; or

(b) any violation of a law of another state, a tribal government, ~~or~~ the federal government, or the military or a foreign entity reasonably equivalent to a violation listed in subsection ~~(13)(a)~~ (14)(a)."

Section 2. Section 46-23-504, MCA, is amended to read:

"**46-23-504. Persons required to register -- procedure.** (1) Except as provided in 41-5-1513 and 45-5-503(5), a sexual or violent offender:

(a) shall register immediately upon conclusion of the sentencing hearing if the offender is not sentenced to confinement or is not sentenced to the department and placed in confinement by the department;

(b) must be registered as provided in 46-23-503 at least 10 days prior to release from confinement if sentenced to confinement or sentenced to the department and placed in confinement by the department;

(c) shall register within 3 business days of entering a county of this state for the purpose of residing or setting up a temporary residence for 10 days or more or for an aggregate period exceeding 30 days in a calendar year; and

(d) who is a transient shall register within 3 business days of entering a county of this state.

(2) Registration under subsection ~~(1)(a), (1)(c), or (1)(d)~~ (1) must be with the appropriate registration agency. If an offender registers with a police department, the department shall notify the sheriff's office of the county in which the municipality is located of the registration. The probation officer having supervision over an offender required to register under subsection (1)(a) shall verify the offender's registration status with the appropriate registration agency.

(3) At the time of registering, the offender shall sign a statement in writing giving the information required by subsections (3)(a) through ~~(3)(h)~~ (3)(k) and any other information required by the department of justice. The registration agency shall fingerprint the offender, unless the offender's fingerprints are on file with the department of justice, photograph the offender, and obtain a DNA sample from the offender. Within 3 days, the registration agency shall send copies of the statement, fingerprints, and photographs to the department of justice. The registration agency shall send the DNA sample to the department of justice for analysis and entry of the DNA record into the DNA identification index. The registration agency shall require an offender given a level 2 or level 3 designation to appear before the registration agency for a new photograph every year. The information collected from the offender at the time of registration must include:

(a) the name of the offender and any aliases used by the offender;

(b) the offender's social security number;

(c) the residence information required by subsection (4);

(d) the name and address of any business or other place where the offender is or will be an employee;

(e) the name and address of any school where the offender will be a student;

(f) the offender's driver's license number;

(g) the description, registration number or identifier, and license number of ~~any~~ all motor ~~vehicle~~

vehicles owned or operated by the offender; and

(h) ~~all of the offender's e-mail addresses and social media screen names.~~ The following information related to the offender's internet activity:

(i) all e-mail addresses used by the offender;

(ii) all instant message addresses and identifiers;

(iii) all other designations or monikers used for self-identification in internet communications or postings; and

(iv) all designations used by the offender for the purpose of routing or self-identification in internet communications, postings, or social media accounts;

(i) any passports held or used by the offender. The department or its designee shall make a photocopy of the passports.

(j) all telephone numbers and any other designations used by the offender for the purposes of routing or self-identification in telephonic communications, including but not limited to:

(i) all cellular telephone numbers;

(ii) all landline telephone numbers; and

(iii) all voice over internet protocol telephone numbers; and

(k) all professional licenses, including the licensing number, licensing agency, and any other identifying information about a professional license issued to the offender that authorizes the offender to engage in an occupation or carry out a trade or business.

(4) (a) If, at the time of registration, the offender regularly resides in more than one county or municipality, the offender shall register with the registration agency of each county or municipality in which the offender resides. If an offender resides in more than one location within the same county or municipality, the registration agency shall require the offender to provide all of the locations where the offender regularly resides and to designate one of them as the offender's primary residence.

(b) Registration of more than one residence pursuant to this section is an exception from the single residence rule provided in 1-1-215.

(5) A transient shall report monthly, in person, to the registration agency with which the transient registered pursuant to subsection (1)(d). The transient shall report on a day specified by the registration agency

and during the normal business hours of that agency. On that day, the transient shall provide the registration agency with the information listed in subsections (3)(a) through ~~(3)(h)~~ (3)(k). The registration agency to which the transient reports may also require the transient to provide the locations where the transient stayed during the previous 30 days and may stay during the next 30 days.

(6) (a) The department of justice shall mail a registration verification form:

(i) each 90 days to an offender designated as a level 3 offender under 46-23-509;

(ii) each 180 days to an offender designated as a level 2 offender under 46-23-509; and

(iii) each year to a violent offender or an offender designated as a level 1 offender under 46-23-509.

(b) If the offender is a transient, the department of justice shall mail the offender's registration verification form to the registration agency with which the offender last registered.

(c) The form must require the offender's notarized signature. Within 10 days after receipt of the form, the offender shall complete the form and return it to the registration agency where the offender last registered or, if the offender was initially registered pursuant to subsection (1)(b), to the registration agency in the county or municipality in which the offender is located. A sexual offender shall return the form to the appropriate registration agency in person, and at the time that the sexual offender returns the registration verification form, the registration agency shall take a photograph of the offender and collect a DNA sample if one has not already been collected. The registration agency shall send the DNA sample to the department of justice for analysis and entry into the DNA identification index.

(7) Within 3 days after receipt of a registration verification form, the registration agency shall provide a copy of the form and most recent photograph to the department of justice.

(8) The offender is responsible, if able to pay, for costs associated with registration. The fees charged for registration may not exceed the actual costs of registration. The department of justice may adopt a rule establishing fees to cover registration costs incurred by the department of justice in maintaining registration and address verification records. The fees must be deposited in the general fund.

(9) The clerk of the district court in the county in which a person is convicted of a sexual or violent offense shall notify the sheriff in that county of the conviction within 10 days after entry of the judgment."

Section 3. Section 46-23-505, MCA, is amended to read:

"**46-23-505. Notice of change of name or residence or student, employment, or transient status -- duty to inform -- forwarding of information.** (1) If an offender required to register under this part has a change of name or residence or a change in student, employment, or transient status, the offender shall within 3 business days of the change appear in person and give notification of the change to the registration agency with whom the offender last registered or, if the offender was initially registered under 46-23-504(1)(b), to the registration agency for the county or municipality from which the offender is moving. The registration agency shall require the offender to appear before the registration agency for a new photograph every year.

(2) If an offender required to register under this part is a transient, the offender shall provide written notification to the registration agency with which the offender last registered or, if the offender initially registered pursuant to 46-23-504(1)(b), shall provide notice within 3 business days to the registration agency in the county or municipality in which the offender resides.

(3) Within 3 business days after receipt of the information concerning the new name or residence or a change in the student, employment, or transient status, the registration agency shall forward the information to the department of justice, which shall forward a copy of the information and photograph to:

(a) in the event of a change in residence, the registration agency for the county to which the offender moves and, if the offender lives in a municipality, the registration agency for that municipality to which the offender moves;

(b) in the event of a change of name or of student, employment, or transient status, the registration agency of the appropriate county or municipality.

(4) If an offender who is required to register under this part is physically absent from the offender's county of residence for more than 10 consecutive days, the offender shall register in the county where the offender is physically located on the 11th day even if the offender claims to maintain a residence, as defined in 46-23-502, in that county. The offender shall register again in the offender's county of residence when the offender returns to that county.

(5) If an offender is required to register under subsection (4), the offender shall register in any subsequent county where the offender is present for more than 24 hours until the offender registers again in the offender's county of residence.

(6) In the event an offender will be absent from this state for more than 7 days, the offender shall provide notice with the information required under this section in person to the registering agency no later than 3 days before their scheduled travel. The registering agency shall forward the information to the department of justice, which shall then notify the provided jurisdiction."

Section 4. Section 46-23-506, MCA, is amended to read:

"**46-23-506. ~~Duration~~ Duty of registration -- duration, frequency, reduction, and relief.** (1) A sexual offender required to register under this part shall register for the remainder of the sexual offender's life, except as provided in subsection (3) or during a period of time during which the sexual offender is in prison.

(2) (a) A violent offender required to register under this part shall register for the 10 years following release from confinement or, if not confined following sentencing, for the 10 years following the conclusion of the sentencing hearing and after registering for 10 years, is automatically relieved of the duty to register unless convicted as provided in subsection (2)(b).

(b) If convicted during the 10-year period provided in subsection (2)(a) of failing to register or keep registration current or of a felony, the violent offender shall register for the remainder of the violent offender's life unless relieved of the duty to register as provided in subsection ~~(3)~~ (2)(e).

(c) When ~~an~~ a violent offender is relieved of the duty to register under subsection (2)(a), the department of justice shall remove the violent offender from the registry.

(d) Petitions for relief from registration under this part must be filed in the appropriate Montana district court. Orders or other documents granting relief from registration requirements that originated in other jurisdictions are not valid in Montana.

(e) Except as provided in subsection (5), at any time after 10 years of registration for a violent offender registered as provided in subsection (2)(b), a violent offender may petition the sentencing court or the district court for the judicial district in which the violent offender resides for an order relieving the violent offender of the duty to register. The petition must be served on the county attorney in the county where the petition is filed. Prior to a hearing on the petition, the county attorney shall mail a copy of the petition to the victim of the last offense for which the violent offender was convicted if the victim's address is reasonably available. The court shall consider any written or oral statements of the victim. The court may grant the petition

on finding that:

(i) the violent offender has remained a law-abiding citizen; and

(ii) continued registration is not necessary for public protection and that relief from registration is in the best interests of society.

(3) Except as provided in subsection ~~(5)~~ (7), at any time after 10 years of registration for ~~a violent offender registered as provided in subsection (2)(b) or~~ a level 1 sexual offender and at any time after 25 years of registration for a level 2 sexual offender, an offender may petition the sentencing court or the district court for the judicial district in which the offender resides for an order relieving the offender of the duty to register. The petition must be served on the county attorney in the county where the petition is filed. Prior to a hearing on the petition, the county attorney shall mail a copy of the petition to the victim of the last offense for which the offender was convicted if the victim's address is reasonably available. The court shall consider any written or oral statements of the victim. The court may grant the petition ~~upon~~ on finding that:

(a) the offender has ~~remained a law-abiding citizen~~ maintained a clean record during their period of registration; and

(b) continued registration is not necessary for public protection and that relief from registration is in the best interests of society.

(4) A level 3 sexual offender may have their period of registration reduced to 25 years if the sexual offender was adjudicated delinquent of an offense as a juvenile that required level 3 sexual offender registration and the sexual offender has maintained a clean record for 25 consecutive years.

(5) For the purposes of this section, the sexual offender has a clean record if, during the period of time in which the sexual offender was required to register as a sexual offender:

(a) the sexual offender was not convicted of any felony offense;

(b) the sexual offender was not convicted of any sexual offense;

(c) the sexual offender successfully completed, without revocation, any period of supervised release, probation, or parole; and

(d) the sexual offender has successfully completed an appropriate sexual offender treatment program.

~~(4)~~(6) The offender may move that all or part of the proceedings in a hearing under ~~subsection~~

subsections (2)(e) and (3) be closed to the public, or the judge may close them on the judge's own motion. If a proceeding under ~~subsection~~ subsections (2)(e) and (3) is closed to the public, the judge shall permit a victim of the offense to be present unless the judge determines that exclusion of the victim is necessary to protect the offender's right of privacy or the safety of the victim. If the victim is present, the judge, at the victim's request, shall permit the presence of an individual to provide support to the victim unless the judge determines that exclusion of the individual is necessary to protect the offender's right to privacy.

~~(5)~~(7) Subsection (3) does not apply to an offender who was convicted of:

(a) a violation of 45-5-503 if:

(i) the victim was compelled to submit by force, as defined in 45-5-501, against the victim or another; or

(ii) at the time the offense occurred, the victim was under 12 years of age;

(b) a violation of 45-5-507 if at the time the offense occurred the victim was under 12 years of age and the offender was 3 or more years older than the victim;

(c) a second or subsequent sexual or violent offense that requires registration; or

(d) a sexual offense and was designated as a sexually violent predator under 46-23-509."

Section 5. Section 46-23-508, MCA, is amended to read:

"**46-23-508. Dissemination of information.** (1) Information maintained under this part is confidential criminal justice information, as defined in 44-5-103, except that:

(a) the name and address of a registered sexual or violent offender are public criminal justice information, as defined in 44-5-103; and

(b) the department of justice or the registration agency shall release any offender registration information that it possesses relevant to the public if the department of justice or the registration agency determines that a registered offender is a risk to the safety of the community and that disclosure of the registration information that it possesses may protect the public and, at a minimum:

(i) if the offender is also a violent offender, the department of justice shall and the registration agency may disseminate to the victim and the public:

(A) the offender's name; and

(B) the offenses for which the offender is required to register under this part;

(ii) if ~~an~~ a sexual offender was given a level 1 designation under 46-23-509, the department of justice shall and the registration agency may disseminate to the victim and the public:

(A) the offender's address;

(B) the name, photograph, and physical description of the offender;

(C) the offender's date of birth; ~~and~~

(D) the offenses for which the offender is required to register under this part;

(E) the offender's employer address; and

(F) the offender's postsecondary school address.

(iii) if ~~an~~ a sexual offender was given a level 1 designation and committed an offense against a minor or was given a level 2 designation under 46-23-509, the department of justice shall and the registration agency may disseminate to the victim and the public:

(A) the offender's address;

(B) the type of victim targeted by the offense;

(C) the name, photograph, and physical description of the offender;

(D) the offender's date of birth;

(E) the license plate number and a description of any motor vehicle owned or operated by the offender;

(F) the offenses for which the offender is required to register under this part; ~~and~~

(G) the offender's employer address;

(H) the offender's postsecondary school address; and

~~(G)~~(I) any conditions imposed by the court upon the offender for the safety of the public; and

(iv) if ~~an~~ a sexual offender was given a level 3 designation under 46-23-509, the department of justice and the registration agency shall give the victim and the public notification that includes the information contained in subsection (1)(b)(iii). The notification must also include the date of the offender's release from confinement or, if not confined, the date the offender was sentenced, with a notation that the offender was not confined, and must include the community in which the offense occurred.

(c) prior to release of information under subsection (1)(b), a registration agency may, in its sole

discretion, request an in camera review by a district court of the determination by the registration agency under subsection (1)(b). The court shall review a request under this subsection (1)(c) and shall, as soon as possible, render its opinion so that release of the information is not delayed beyond release of the offender from confinement.

(2) The identity of a victim of an offense for which registration is required under this part may not be released by a registration agency without the permission of the victim.

(3) Dissemination to the public of information allowed or required by this section may be done by newspaper, paper flyers, the internet, or any other media determined by the disseminating entity. In determining the method of dissemination, the disseminating entity should consider the level of risk posed by the offender to the public.

(4) The department of justice shall develop a model community notification policy to assist registration agencies in implementing the dissemination provisions of this section."

Section 6. Section 46-23-509, MCA, is amended to read:

"**46-23-509. Psychosexual evaluations and sexual offender designations.** (1) Prior to sentencing of a person convicted of a sexual offense, a sexual offender evaluator who has a license endorsement as provided for in 37-1-139 shall provide the court with a psychosexual evaluation report recommending one of the following levels of designation for the offender:

(a) level 1, the risk of a repeat sexual offense is low;

(b) level 2, the risk of a repeat sexual offense is moderate;

(c) level 3, the risk of a repeat sexual offense is high, there is a threat to public safety, and the sexual offender evaluator believes that the offender is a sexually violent predator.

(2) Upon sentencing the offender, the court shall:

(a) review the psychosexual evaluation report, any statement by a victim, and any statement by the offender;

(b) designate the offender as level 1, 2, or 3; and

(c) designate a level 3 offender as a sexually violent predator.

(3) An offender designated as a level 2 offender or given a level designation by another state, the

federal government, or the department under subsection (5) that is determined by the court to be similar to level 2 may petition the sentencing court or the district court for the judicial district in which the offender resides to change the offender's designation if the offender has enrolled in and successfully completed the treatment phase of either the prison's sexual offender treatment program or of an equivalent program approved by the department. After considering the petition, the court may change the offender's risk level designation if the court finds by clear and convincing evidence that the offender's risk of committing a repeat sexual offense has changed since the time sentence was imposed. The court shall impose one of the three risk levels specified in this section.

(4) If, at the time of sentencing, the sentencing judge did not apply a level designation to a sexual offender who is required to register under this part and who was sentenced prior to October 1, 1997, the department shall designate the offender as level 1, 2, or 3 when the offender is released from confinement.

(5) If an offense is covered by ~~46-23-502(9)(b)~~ 46-23-502(10)(g), the offender registers under 46-23-504(1)(c), and the offender was given a risk level designation after conviction by another state or the federal government, the department of justice may give the offender the risk level designation assigned by the other state or the federal government. All offenders convicted in another state or by the federal government who are not currently under the supervision of the department or the youth court and were not given a risk level designation after conviction shall provide to the department of justice all prior risk assessments and psychosexual evaluations done to evaluate the offender's risk to reoffend. Any offender without a risk assessment or psychosexual evaluation shall, at the offender's expense, undergo a psychosexual evaluation with a sexual offender evaluator who has a license endorsement as provided for in 37-1-139. The results of the psychosexual evaluation may be requested by the attorney general or a county attorney for purposes of petitioning a district court to assign a risk level designation.

(6) The lack of a fixed residence is a factor that may be considered by the sentencing court or by the department in determining the risk level to be assigned to an offender pursuant to this section.

(7) Upon obtaining information that indicates that a sexual offender who is required to register under this part does not have a level 1, 2, or 3 designation, the offender, the attorney general, the county attorney that prosecuted the offender and obtained a conviction for a sexual offense, or the county attorney for the county in which the offender resides may, at any time, petition the district court that sentenced the offender

for a sexual offense or the district court for the judicial district in which the offender resides to designate the offender as level 1, 2, or 3. Upon the filing of the petition, the court may order a psychosexual evaluation report at the petitioner's expense, or order that the results of all prior psychosexual evaluations be provided to all parties. The court shall provide the offender with an opportunity for a hearing prior to designating the offender. The petitioner shall provide the offender, the attorney general, and the county attorney that prosecuted the offender with notice of the petition and notice of the hearing. As provided in 46-23-506(2)(d), petitions for relief from registration under this part must be filed in the appropriate Montana district court. Orders or other documents granting relief from registration requirements that originated in other jurisdictions are not valid in Montana."

Section 7. Coordination instruction. If both House Bill No. 112 and [this act] are passed and approved and both contain a section that amends 46-23-502, then the sections that amend 46-23-502 are void and 46-23-502 must be amended as follows:

"**46-23-502. Definitions.** As used in Title 45, chapter 5, part 3 and parts 5 through 7, 46-18-255, and this part, the following definitions apply:

(1) "Department" means the department of corrections provided for in 2-15-2301.

(2) "Foreign offenses" means a conviction for a sexual offense involving any of the conduct listed in this section that was obtained under the laws of Canada, the United Kingdom, Australia, or New Zealand, or under the laws of any foreign country when the United States department of state, in its country reports on human rights practices, has concluded that an independent judiciary generally or vigorously enforced the right to a fair trial in that country during the year in which the conviction was obtained.

~~(2)~~(3) "Mental abnormality" means a congenital or acquired condition that affects the mental, emotional, or volitional capacity of a person in a manner that predisposes the person to the commission of one or more sexual offenses to a degree that makes the person a menace to the health and safety of other persons.

~~(3)~~(4) "Municipality" means an entity that has incorporated as a city or town.

~~(4)~~(5) "Personality disorder" means a personality disorder as defined in the fourth edition of the Diagnostic and Statistical Manual of Mental Disorders adopted by the American psychiatric association.

~~(5)~~(6) "Predatory sexual offense" means a sexual offense committed against a stranger or against a

person with whom a relationship has been established or furthered for the primary purpose of victimization.

~~(6)~~(7) "Registration agency" means:

(a) if the offender resides in a municipality, the police department of that municipality; or

(b) if the offender resides in a place other than a municipality, the sheriff's office of the county in which the offender resides.

~~(7)~~(8) (a) "Residence" means the location at which a person regularly resides, regardless of the number of days or nights spent at that location, that can be located by a street address, including a house, apartment building, motel, hotel, or recreational or other vehicle.

(b) The term does not mean a homeless shelter.

~~(8)~~(9) "Sexual offender evaluator" means a person qualified under rules established by the department to conduct psychosexual evaluations of sexual offenders and sexually violent predators.

~~(9)~~(10) (a) "Sexual offense" means~~:~~ any violation, attempt, solicitation, or conspiracy to commit a violation, or flight after the attempt or commission of the following:

~~(a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-301 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-302 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-303 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-502 (if the offender is a professional licensed under Title 37 and commits the offense during any treatment, consultation, interview, or evaluation of a person's physical or mental condition, ailment, disease, or injury), 45-5-502 (3) (if the victim is less than 16 years of age and the offender is 3 or more years older than the victim), 45-5-503 (1), (3), or (4), 45-5-504 (2)(c), 45-5-504 (3) (if the victim is less than 16 years of age and the offender is 4 or more years older than the victim), 45-5-507 (if the victim is less than 18 years of age and the offender is 3 or more years older than the victim or if the victim is 12 years of age or younger and the offender is 18 years of age or older at the time of the offense), 45-5-508, 45-5-601 (3), 45-5-602 (3), 45-5-603 (1)(b), (2)(b), or (2)(c), 45-5-625, 45-5-704, or 45-5-705 ; or~~

(i) 45-5-301, Unlawful restraint, if the victim is less than 18 years of age and the offender is not a parent of the victim;

(ii) 45-5-302, Kidnapping, if the victim is less than 18 years of age and the offender is not a parent of the victim;

(iii) 45-5-303, Aggravated kidnapping, if the victim is less than 18 years of age and the offender is not a parent of the victim;

(iv) 45-5-502(2)(c) and (3), Sexual assault;

(v) 45-5-503, Sexual intercourse without consent;

(vi) 45-5-504(2)(c) and (3), Indecent exposure;

(vii) 45-5-507, Incest, if the victim is less than 18 years of age and the offender is 3 or more years older than the victim, or if the victim is 12 years of age or younger and the offender is 18 years of age or older at the time of the offense;

(viii) 45-5-508, Aggravated sexual intercourse without consent;

(ix) 45-5-601(2)(b) and (3), Prostitution;

(x) 45-5-622(2)(b)(ii), Endangering the welfare of children;

(xi) 45-5-625, Sexual abuse of children;

(xii) 45-5-627(1)(a), Ritual abuse of a minor;

(xiii) 45-5-705, Patronizing a victim of sex trafficking;

(xiv) 45-5-706, Aggravated sex trafficking;

(xv) [section 19 of House Bill No. 112], Child sex trafficking; or

~~(b)~~(xvi) any violation of a law of another state, a tribal government, ~~or~~ the federal government, or the military or a foreign entity that is reasonably equivalent to a violation listed in subsection ~~(9)(a)~~ (10)(a)(i) through (10)(a)(xv) or for which the offender was required to register as a sexual offender after an adjudication or conviction.

(b) The term does not include the exceptions provided for in 45-5-501, 45-5-502, and 45-5-503.

~~(10)~~(11) "Sexual or violent offender" means a person who has been convicted of or, in youth court, found to have committed or been adjudicated for a sexual or violent offense.

~~(11)~~(12) "Sexually violent predator" means a person who:

(a) has been convicted of or, in youth court, found to have committed or been adjudicated for a sexual offense and who suffers from a mental abnormality or a personality disorder that makes the person likely to engage in predatory sexual offenses; or

(b) has been convicted of a sexual offense against a victim 12 years of age or younger and the

offender is 18 years of age or older.

~~(12)~~(13) "Transient" means an offender who has no residence.

~~(13)~~(14) "Violent offense" means:

(a) any violation of or attempt, solicitation, or conspiracy to commit a violation of;

(i) 45-5-102, Deliberate homicide;

(ii) 45-5-103, Mitigated deliberate homicide;

(iii) 45-5-202, Aggravated assault;

(iv) 45-5-206 (third or subsequent offense), Partner or family member assault;

(v) 45-5-210(1)(b), (1)(c), or (1)(d), Assault on a peace officer or judicial officer;

(vi) 45-5-212, Assault on a minor;

(vii) 45-5-213, Assault with a weapon;

(viii) 45-5-215, Strangulation of a partner or family member;

(ix) 45-5-302 (if the victim is not a minor), Kidnapping;

(x) 45-5-303 (if the victim is not a minor), Aggravated kidnapping;

(xi) 45-5-401, Robbery;

(xii) 45-6-103, Arson; or

(xiii) 45-9-132; Operation of unlawful clandestine laboratory; or

(b) any violation of a law of another state, a tribal government, ~~or~~ the federal government, or the military or a foreign entity reasonably equivalent to a violation listed in subsection ~~(13)(a)~~ (14)(a)."

Section 8. Coordination instruction. (1) If House Bill No. 112, House Bill No. 525, and [this act] are passed and approved and all three contain a section that amends 46-23-502, then the section in House Bill No. 525 that amends 46-23-502 is void and [section 7 of this act], amending 46-23-502, must be further amended so that 46-23-502(10)(a)(iv) reads:

"(iv) 45-5-502(2)(c), (3), and (4), Sexual assault;".

(2) If House Bill No. 112 is not passed and approved and House Bill No. 525 and [this act] are passed and approved, then the section in House Bill No. 525 that amends 46-23-502 is void and [section 1 of this act], amending 46-23-502, must be further amended so that 46-23-502(10)(a)(iv) reads:

"(iv) 45-5-502(1), (2)(c), (3), and (4), Sexual assault;".

Section 9. Coordination instruction. (1) If House Bill No. 112, Senate Bill No. 345, and [this act] are passed and approved and all three contain a section that amends 46-23-502, then the section in Senate Bill No. 345 that amends 46-23-502 is void and [section 7 of this act], amending 46-23-502, must be further amended so that the definition of "sexual offense" in 46-23-502(10)(a) includes the following offense:

45-8-218, Deviate sexual conduct.

(2) If House Bill No. 112 is not passed and approved and Senate Bill No. 345 and [this act] are passed and approved, then the section in Senate Bill No. 345 that amends 46-23-502 is void and [section 1 of this act], amending 46-23-502, must be further amended so that the definition of "sexual offense" in 46-23-502(10)(a) includes the following offense:

45-8-218, Deviate sexual conduct.

- END -

I hereby certify that the within bill,

SB 38, originated in the Senate.

_____

Secretary of the Senate

_____

President of the Senate

Signed this _____day

of _____, 2023.

_____

Speaker of the House

Signed this _____day
of _____, 2023.

SENATE BILL NO. 38

INTRODUCED BY B. BROWN

BY REQUEST OF THE DEPARTMENT OF JUSTICE

AN ACT GENERALLY REVISING STATUTES RELATED TO LEVEL DESIGNATIONS FOR SEXUAL OFFENDERS; PROVIDING DEFINITIONS; REQUIRING ADDITIONAL INFORMATION FROM OFFENDERS REGARDING ELECTRONIC AND COMMUNICATIONS DATA AND PROFESSIONAL LICENSES; REQUIRING NOTICE WHEN AN OFFENDER IS LEAVING THE STATE; PROVIDING OPPORTUNITIES FOR CERTAIN OFFENDERS TO BE REMOVED FROM THE REGISTRY; PROVIDING NOTICE REQUIREMENTS FOR PSYCHOSEXUAL EVALUATIONS; AND AMENDING SECTIONS 46-23-502, 46-23-504, 46-23-505, 46-23-506, 46-23-508, AND 46-23-509, MCA.

Exported Data

Date	Action	Committee	Votes (Yes)	Votes (No)	Media
05/22/23	Chapter Number Assigned				
05/19/23	(S) Signed by Governor				
05/11/23	(S) Transmitted to Governor				
05/11/23	(H) Signed by Speaker				
05/04/23	(S) Signed by President				
04/26/23	(C) Printed - Enrolled Version Available				
04/26/23	(S) Returned from Enrolling				
04/20/23	(S) Sent to Enrolling				
04/20/23	(S) 3rd Reading Passed as Amended by House		47	0	
04/20/23	(S) Scheduled for 3rd Reading				
04/19/23	(S) 2nd Reading House Amendments Concurred		50	0	
04/19/23	(S) Scheduled for 2nd Reading				
04/18/23	(H) Returned to Senate with Amendments				
04/17/23	(H) 3rd Reading Concurred		85	12	
04/17/23	(H) Scheduled for 3rd Reading				
04/13/23	(C) Printed - New Version Available				
04/13/23	(H) 2nd Reading Concurred as Amended		85	14	
04/13/23	(H) 2nd Reading Motion to Amend Carried		98	0	
04/13/23	(H) Scheduled for 2nd Reading				
04/12/23	(H) 2nd Reading Pass Consideration				
04/05/23	(H) Committee Report--Bill Concurred as Amended	(H) Judiciary			
04/05/23	(C) Printed - New Version Available				
04/05/23	(H) Committee Executive Action--Bill Concurred as Amended	(H) Judiciary	15	4	
04/04/23	(C) Amendments Available				
03/23/23	(H) Hearing	(H) Judiciary			
03/11/23	(H) First Reading				
03/11/23	(H) Referred to Committee	(H) Judiciary			
01/27/23	(S) Transmitted to House				
01/26/23	(S) 3rd Reading Passed		35	14	
01/25/23	(S) 2nd Reading Passed		35	14	
01/25/23	(S) Scheduled for 2nd Reading				

Date	Action	Committee	Votes (Yes)	Votes (No)	Media
01/19/23	(S) Committee Report--Bill Passed	(S) Judiciary			
01/11/23	(S) Committee Executive Action--Bill Passed	(S) Judiciary	7	4	
01/05/23	(S) Hearing	(S) Judiciary			
01/02/23	(S) First Reading				
12/28/22	(S) Referred to Committee	(S) Judiciary			
12/12/22	(C) Introduced Bill Text Available Electronically				
12/08/22	(S) Introduced				
12/06/22	(C) Draft in Assembly				
12/06/22	(C) Executive Director Review				
12/05/22	(C) Bill Draft Text Available Electronically				
12/05/22	(C) Draft in Final Drafter Review				
12/05/22	(C) Draft in Input/Proofing				
12/04/22	(C) Draft to Drafter - Edit Review				
12/02/22	(C) Draft in Edit				
12/01/22	(C) Draft in Legal Review				
08/16/22	(C) Draft Request Received				

SENATE BILL NO. 38

INTRODUCED BY B. BROWN

BY REQUEST OF THE DEPARTMENT OF JUSTICE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING STATUTES RELATED TO LEVEL DESIGNATIONS FOR SEXUAL OFFENDERS; PROVIDING DEFINITIONS; REQUIRING ADDITIONAL INFORMATION FROM OFFENDERS REGARDING ELECTRONIC AND COMMUNICATIONS DATA AND PROFESSIONAL LICENSES; REQUIRING NOTICE WHEN AN OFFENDER IS LEAVING THE STATE; PROVIDING OPPORTUNITIES FOR CERTAIN OFFENDERS TO BE REMOVED FROM THE REGISTRY; PROVIDING NOTICE REQUIREMENTS FOR PSYCHOSEXUAL EVALUATIONS; AND AMENDING SECTIONS 46-23-502, 46-23-504, 46-23-505, 46-23-506, 46-23-508, AND 46-23-509, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 46-23-502, MCA, is amended to read:

"**46-23-502. Definitions.** As used in Title 45, chapter 5, part 3 and parts 5 through 7, 46-18-255, and this part, the following definitions apply:

(1) "Department" means the department of corrections provided for in 2-15-2301.

(2) "Foreign offenses" means a conviction for a sexual offense involving any of the conduct listed in this section that was obtained under the laws of Canada, the United Kingdom, Australia, or New Zealand, or under the laws of any foreign country when the United States department of state, in its country reports on human rights practices, has concluded that an independent judiciary generally or vigorously enforced the right to a fair trial in that country during the year in which the conviction occurred.

~~(2)~~(3) "Mental abnormality" means a congenital or acquired condition that affects the mental, emotional, or volitional capacity of a person in a manner that predisposes the person to the commission of one or more sexual offenses to a degree that makes the person a menace to the health and safety of other persons.

~~(3)~~(4) "Municipality" means an entity that has incorporated as a city or town.

~~(4)~~(5) "Personality disorder" means a personality disorder as defined in the fourth edition of the

Diagnostic and Statistical Manual of Mental Disorders adopted by the American psychiatric association.

~~(5)~~(6) "Predatory sexual offense" means a sexual offense committed against a stranger or against a person with whom a relationship has been established or furthered for the primary purpose of victimization.

~~(6)~~(7) "Registration agency" means:

(a) if the offender resides in a municipality, the police department of that municipality; or

(b) if the offender resides in a place other than a municipality, the sheriff's office of the county in which the offender resides.

~~(7)~~(8) (a) "Residence" means the location at which a person regularly resides, regardless of the number of days or nights spent at that location, that can be located by a street address, including a house, apartment building, motel, hotel, or recreational or other vehicle.

(b) The term does not mean a homeless shelter.

~~(8)~~(9) "Sexual offender evaluator" means a person qualified under rules established by the department to conduct psychosexual evaluations of sexual offenders and sexually violent predators.

~~(9)~~(10) (a) "Sexual offense" means~~:~~ any violation, attempt, solicitation, or conspiracy to commit a violation, or flight after the attempt or commission of the following:

~~(a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-301 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-302 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-303 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-502 (if the offender is a professional licensed under Title 37 and commits the offense during any treatment, consultation, interview, or evaluation of a person's physical or mental condition, ailment, disease, or injury), 45-5-502 (3) (if the victim is less than 16 years of age and the offender is 3 or more years older than the victim), 45-5-503 (1), (3), or (4), 45-5-504 (2)(c), 45-5-504 (3) (if the victim is less than 16 years of age and the offender is 4 or more years older than the victim), 45-5-507 (if the victim is less than 18 years of age and the offender is 3 or more years older than the victim or if the victim is 12 years of age or younger and the offender is 18 years of age or older at the time of the offense), 45-5-508, 45-5-601 (3), 45-5-602 (3), 45-5-603 (1)(b), (2)(b), or (2)(c), 45-5-625, 45-5-704, or 45-5-705 ; or~~

(i) 45-5-301, Unlawful restraint, if the victim is less than 18 years of age and the offender is not a parent of the victim;

(ii) 45-5-302, Kidnapping, if the victim is less than 18 years of age and the offender is not a parent of the victim;

(iii) 45-5-303, Aggravated kidnapping, if the victim is less than 18 years of age and the offender is not a parent of the victim;

(iv) 45-5-502(1), (2)(c), and (3), ~~(4), and (5),~~ Sexual assault;

(v) 45-5-503, Sexual intercourse without consent;

(vi) 45-5-504(2)(c) and (3), Indecent exposure;

(vii) 45-5-507, Incest, if the victim is less than 18 years of age and the offender is 3 or more years older than the victim, or if the victim is 12 years of age or younger and the offender is 18 years of age or older at the time of the offense;

(viii) 45-5-508, Aggravated sexual intercourse without consent;

(ix) 45-5-601(2)(b), (3), and (4) Prostitution;

(x) 45-5-602(3) and (4), Promoting prostitution;

(xi) 45-5-603, Aggravated promotion of prostitution;

(xii) 45-5-622(2)(b)(ii), Endangering welfare of children;

(xiii) 45-5-625, Sexual abuse of children;

(xiv) 45-5-627(1)(a), Ritual abuse of minor;

(xv) 45-5-704, Sexual servitude;

(xvi) 45-5-705, Patronizing victim of sexual servitude; or

~~(b)~~(xvii) any violation of a law of another state, a tribal government, ~~or~~ the federal government, or the military or a foreign entity that is reasonably equivalent to a violation listed in subsection ~~(9)(a)~~ (10)(a)(i) through (10)(a)(xvi) or for which the offender was required to register as a sexual offender after an adjudication or conviction.

(b) This term does not include the exceptions provided for in 45-5-501, 45-5-502, and 45-5-503.

~~(10)~~(11) "Sexual or violent offender" means a person who has been convicted of or, in youth court, found to have committed or been adjudicated for a sexual or violent offense.

~~(11)~~(12) "Sexually violent predator" means a person who:

(a) has been convicted of or, in youth court, found to have committed or been adjudicated for a

sexual offense and who suffers from a mental abnormality or a personality disorder that makes the person likely to engage in predatory sexual offenses; or

(b) has been convicted of a sexual offense against a victim 12 years of age or younger and the offender is 18 years of age or older.

~~(12)~~(13) "Transient" means an offender who has no residence.

~~(13)~~(14) "Violent offense" means:

(a) any violation of or attempt, solicitation, or conspiracy to commit a violation of:

(i) 45-5-102, Deliberate homicide;

(ii) 45-5-103, Mitigated deliberate homicide;

(iii) 45-5-202, Aggravated assault;

(iv) 45-5-206 (third or subsequent offense), Partner or family member assault;

(v) 45-5-210(1)(b), (1)(c), or (1)(d), Assault on a peace officer or judicial officer;

(vi) 45-5-212, Assault on a minor;

(vii) 45-5-213, Assault with weapon;

(viii) 45-5-215, Strangulation of partner or family member;

(ix) 45-5-302 (if the victim is not a minor), Kidnapping ;

(x) 45-5-303 (if the victim is not a minor), Aggravated kidnapping;

(xi) 45-5-401, Robbery;

(xii) 45-6-103, Arson; or

(xiii) 45-9-132, Operation of unlawful clandestine laboratory; or

(b) any violation of a law of another state, a tribal government, ~~or~~ the federal government, or the military or a foreign entity reasonably equivalent to a violation listed in subsection ~~(13)(a)~~ (14)(a)."

Section 2. Section 46-23-504, MCA, is amended to read:

"**46-23-504. Persons required to register -- procedure.** (1) Except as provided in 41-5-1513 and 45-5-503(5), a sexual or violent offender:

(a) shall register immediately upon conclusion of the sentencing hearing if the offender is not sentenced to confinement or is not sentenced to the department and placed in confinement by the department;

(b) must be registered as provided in 46-23-503 at least 10 days prior to release from confinement if sentenced to confinement or sentenced to the department and placed in confinement by the department;

(c) shall register within 3 business days of entering a county of this state for the purpose of residing or setting up a temporary residence for 10 days or more or for an aggregate period exceeding 30 days in a calendar year; and

(d) who is a transient shall register within 3 business days of entering a county of this state.

(2) Registration under subsection ~~(1)(a), (1)(c), or (1)(d)~~ (1) must be with the appropriate registration agency. If an offender registers with a police department, the department shall notify the sheriff's office of the county in which the municipality is located of the registration. The probation officer having supervision over an offender required to register under subsection (1)(a) shall verify the offender's registration status with the appropriate registration agency.

(3) At the time of registering, the offender shall sign a statement in writing giving the information required by subsections (3)(a) through ~~(3)(h)~~ (3)(k) and any other information required by the department of justice. The registration agency shall fingerprint the offender, unless the offender's fingerprints are on file with the department of justice, photograph the offender, and obtain a DNA sample from the offender. Within 3 days, the registration agency shall send copies of the statement, fingerprints, and photographs to the department of justice. The registration agency shall send the DNA sample to the department of justice for analysis and entry of the DNA record into the DNA identification index. The registration agency shall require an offender given a level 2 or level 3 designation to appear before the registration agency for a new photograph every year. The information collected from the offender at the time of registration must include:

(a) the name of the offender and any aliases used by the offender;

(b) the offender's social security number;

(c) the residence information required by subsection (4);

(d) the name and address of any business or other place where the offender is or will be an employee;

(e) the name and address of any school where the offender will be a student;

(f) the offender's driver's license number;

(g) the description, registration number or identifier, and license number of ~~any~~ all motor ~~vehicle~~

vehicles owned or operated by the offender; and

(h) ~~all of the offender's e-mail addresses and social media screen names.~~The following information related to the offender's internet activity:

(i) all e-mail addresses used by the offender;

(ii) all instant message addresses and identifiers;

(iii) all other designations or monikers used for self-identification in internet communications or postings; and

(iv) all designations used by the offender for the purpose of routing or self-identification in internet communications, postings, or social media accounts;

(i) any passports held or used by the offender. The department or its designee shall make a photocopy of the passports.

(j) all telephone numbers and any other designations used by the offender for the purposes of routing or self-identification in telephonic communications, including but not limited to:

(i) all cellular telephone numbers;

(ii) all landline telephone numbers; and

(iii) all voice over internet protocol telephone numbers; and

(k) all professional licenses, including the licensing number, licensing agency, and any other identifying information about a professional license issued to the offender that authorizes the offender to engage in an occupation or carry out a trade or business.

(4) (a) If, at the time of registration, the offender regularly resides in more than one county or municipality, the offender shall register with the registration agency of each county or municipality in which the offender resides. If an offender resides in more than one location within the same county or municipality, the registration agency shall require the offender to provide all of the locations where the offender regularly resides and to designate one of them as the offender's primary residence.

(b) Registration of more than one residence pursuant to this section is an exception from the single residence rule provided in 1-1-215.

(5) A transient shall report monthly, in person, to the registration agency with which the transient registered pursuant to subsection (1)(d). The transient shall report on a day specified by the registration agency

and during the normal business hours of that agency. On that day, the transient shall provide the registration agency with the information listed in subsections (3)(a) through ~~(3)(h)~~ (3)(k). The registration agency to which the transient reports may also require the transient to provide the locations where the transient stayed during the previous 30 days and may stay during the next 30 days.

(6) (a) The department of justice shall mail a registration verification form:

(i) each 90 days to an offender designated as a level 3 offender under 46-23-509;

(ii) each 180 days to an offender designated as a level 2 offender under 46-23-509; and

(iii) each year to a violent offender or an offender designated as a level 1 offender under 46-23-509.

(b) If the offender is a transient, the department of justice shall mail the offender's registration verification form to the registration agency with which the offender last registered.

(c) The form must require the offender's notarized signature. Within 10 days after receipt of the form, the offender shall complete the form and return it to the registration agency where the offender last registered or, if the offender was initially registered pursuant to subsection (1)(b), to the registration agency in the county or municipality in which the offender is located. A sexual offender shall return the form to the appropriate registration agency in person, and at the time that the sexual offender returns the registration verification form, the registration agency shall take a photograph of the offender and collect a DNA sample if one has not already been collected. The registration agency shall send the DNA sample to the department of justice for analysis and entry into the DNA identification index.

(7) Within 3 days after receipt of a registration verification form, the registration agency shall provide a copy of the form and most recent photograph to the department of justice.

(8) The offender is responsible, if able to pay, for costs associated with registration. The fees charged for registration may not exceed the actual costs of registration. The department of justice may adopt a rule establishing fees to cover registration costs incurred by the department of justice in maintaining registration and address verification records. The fees must be deposited in the general fund.

(9) The clerk of the district court in the county in which a person is convicted of a sexual or violent offense shall notify the sheriff in that county of the conviction within 10 days after entry of the judgment."

Section 3. Section 46-23-505, MCA, is amended to read:

"**46-23-505. Notice of change of name or residence or student, employment, or transient status -- duty to inform -- forwarding of information.** (1) If an offender required to register under this part has a change of name or residence or a change in student, employment, or transient status, the offender shall within 3 business days of the change appear in person and give notification of the change to the registration agency with whom the offender last registered or, if the offender was initially registered under 46-23-504(1)(b), to the registration agency for the county or municipality from which the offender is moving. The registration agency shall require the offender to appear before the registration agency for a new photograph every year.

(2) If an offender required to register under this part is a transient, the offender shall provide written notification to the registration agency with which the offender last registered or, if the offender initially registered pursuant to 46-23-504(1)(b), shall provide notice within 3 business days to the registration agency in the county or municipality in which the offender resides.

(3) Within 3 business days after receipt of the information concerning the new name or residence or a change in the student, employment, or transient status, the registration agency shall forward the information to the department of justice, which shall forward a copy of the information and photograph to:

(a) in the event of a change in residence, the registration agency for the county to which the offender moves and, if the offender lives in a municipality, the registration agency for that municipality to which the offender moves;

(b) in the event of a change of name or of student, employment, or transient status, the registration agency of the appropriate county or municipality.

(4) If an offender who is required to register under this part is physically absent from the offender's county of residence for more than 10 consecutive days, the offender shall register in the county where the offender is physically located on the 11th day even if the offender claims to maintain a residence, as defined in 46-23-502, in that county. The offender shall register again in the offender's county of residence when the offender returns to that county.

(5) If an offender is required to register under subsection (4), the offender shall register in any subsequent county where the offender is present for more than 24 hours until the offender registers again in the offender's county of residence.

(6) In the event an offender will be absent from this state for more than 7 days, the offender shall provide notice with the information required under this section in person to the registering agency no later than 3 days before their scheduled travel. The registering agency shall forward the information to the department of justice, which shall then notify the provided jurisdiction."

Section 4. Section 46-23-506, MCA, is amended to read:

"**46-23-506. ~~Duration~~ Duty of registration -- duration, frequency, reduction, and relief.** (1) A sexual offender required to register under this part shall register for the remainder of the sexual offender's life, except as provided in subsection (3) or during a period of time during which the sexual offender is in prison.

(2) (a) A violent offender required to register under this part shall register for the 10 years following release from confinement or, if not confined following sentencing, for the 10 years following the conclusion of the sentencing hearing and after registering for 10 years, is automatically relieved of the duty to register unless convicted as provided in subsection (2)(b).

(b) If convicted during the 10-year period provided in subsection (2)(a) of failing to register or keep registration current or of a felony, the violent offender shall register for the remainder of the violent offender's life unless relieved of the duty to register as provided in subsection ~~(3)~~ (2)(e).

(c) When ~~an~~ a violent offender is relieved of the duty to register under subsection (2)(a), the department of justice shall remove the violent offender from the registry.

(d) Petitions for relief from registration under this part must be filed in the appropriate Montana district court. Orders or other documents granting relief from registration requirements that originated in other jurisdictions are not valid in Montana.

(e) Except as provided in subsection (5), at any time after 10 years of registration for a violent offender registered as provided in subsection (2)(b), a violent offender may petition the sentencing court or the district court for the judicial district in which the violent offender resides for an order relieving the violent offender of the duty to register. The petition must be served on the county attorney in the county where the petition is filed. Prior to a hearing on the petition, the county attorney shall mail a copy of the petition to the victim of the last offense for which the violent offender was convicted if the victim's address is reasonably available. The court shall consider any written or oral statements of the victim. The court may grant the petition

on finding that:

(i) the violent offender has remained a law-abiding citizen; and

(ii) continued registration is not necessary for public protection and that relief from registration is in the best interests of society.

(3) Except as provided in subsection ~~(5)~~ (7), at any time after 10 years of registration for ~~a violent offender registered as provided in subsection (2)(b) or~~ a level 1 sexual offender and at any time after 25 years of registration for a level 2 sexual offender, an offender may petition the sentencing court or the district court for the judicial district in which the offender resides for an order relieving the offender of the duty to register. The petition must be served on the county attorney in the county where the petition is filed. Prior to a hearing on the petition, the county attorney shall mail a copy of the petition to the victim of the last offense for which the offender was convicted if the victim's address is reasonably available. The court shall consider any written or oral statements of the victim. The court may grant the petition ~~upon~~ on finding that:

(a) the offender has ~~remained a law-abiding citizen~~ maintained a clean record during their period of registration; and

(b) continued registration is not necessary for public protection and that relief from registration is in the best interests of society.

(4) A level 3 sexual offender may have their period of registration reduced to 25 years if the sexual offender was adjudicated delinquent of an offense as a juvenile that required level 3 sexual offender registration and the sexual offender has maintained a clean record for 25 consecutive years.

(5) For the purposes of this section, the sexual offender has a clean record if, during the period of time in which the sexual offender was required to register as a sexual offender:

(a) the sexual offender was not convicted of any felony offense;

(b) the sexual offender was not convicted of any sexual offense;

(c) the sexual offender successfully completed, without revocation, any period of supervised release, probation, or parole; and

(d) the sexual offender has successfully completed an appropriate sexual offender treatment program.

~~(4)~~(6) The offender may move that all or part of the proceedings in a hearing under ~~subsection~~

subsections (2)(e) and (3) be closed to the public, or the judge may close them on the judge's own motion. If a proceeding under ~~subsection~~ subsections (2)(e) and (3) is closed to the public, the judge shall permit a victim of the offense to be present unless the judge determines that exclusion of the victim is necessary to protect the offender's right of privacy or the safety of the victim. If the victim is present, the judge, at the victim's request, shall permit the presence of an individual to provide support to the victim unless the judge determines that exclusion of the individual is necessary to protect the offender's right to privacy.

~~(5)~~(7) Subsection (3) does not apply to an offender who was convicted of:

(a) a violation of 45-5-503 if:

(i) the victim was compelled to submit by force, as defined in 45-5-501, against the victim or another; or

(ii) at the time the offense occurred, the victim was under 12 years of age;

(b) a violation of 45-5-507 if at the time the offense occurred the victim was under 12 years of age and the offender was 3 or more years older than the victim;

(c) a second or subsequent sexual or violent offense that requires registration; or

(d) a sexual offense and was designated as a sexually violent predator under 46-23-509."

Section 5. Section 46-23-508, MCA, is amended to read:

"**46-23-508. Dissemination of information.** (1) Information maintained under this part is confidential criminal justice information, as defined in 44-5-103, except that:

(a) the name and address of a registered sexual or violent offender are public criminal justice information, as defined in 44-5-103; and

(b) the department of justice or the registration agency shall release any offender registration information that it possesses relevant to the public if the department of justice or the registration agency determines that a registered offender is a risk to the safety of the community and that disclosure of the registration information that it possesses may protect the public and, at a minimum:

(i) if the offender is also a violent offender, the department of justice shall and the registration agency may disseminate to the victim and the public:

(A) the offender's name; and

(B) the offenses for which the offender is required to register under this part;

(ii) if ~~an~~ a sexual offender was given a level 1 designation under 46-23-509, the department of justice shall and the registration agency may disseminate to the victim and the public:

(A) the offender's address;

(B) the name, photograph, and physical description of the offender;

(C) the offender's date of birth; ~~and~~

(D) the offenses for which the offender is required to register under this part;

(E) the offender's employer address; and

(F) the offender's post-secondary school address.

(iii) if ~~an~~ a sexual offender was given a level 1 designation and committed an offense against a minor or was given a level 2 designation under 46-23-509, the department of justice shall and the registration agency may disseminate to the victim and the public:

(A) the offender's address;

(B) the type of victim targeted by the offense;

(C) the name, photograph, and physical description of the offender;

(D) the offender's date of birth;

(E) the license plate number and a description of any motor vehicle owned or operated by the offender;

(F) the offenses for which the offender is required to register under this part; ~~and~~

(G) the offender's employer address;

(H) the offender's post-secondary school address; and

~~(G)~~(I) any conditions imposed by the court upon the offender for the safety of the public; and

(iv) if ~~an~~ a sexual offender was given a level 3 designation under 46-23-509, the department of justice and the registration agency shall give the victim and the public notification that includes the information contained in subsection (1)(b)(iii). The notification must also include the date of the offender's release from confinement or, if not confined, the date the offender was sentenced, with a notation that the offender was not confined, and must include the community in which the offense occurred.

(c) prior to release of information under subsection (1)(b), a registration agency may, in its sole

discretion, request an in camera review by a district court of the determination by the registration agency under subsection (1)(b). The court shall review a request under this subsection (1)(c) and shall, as soon as possible, render its opinion so that release of the information is not delayed beyond release of the offender from confinement.

(2) The identity of a victim of an offense for which registration is required under this part may not be released by a registration agency without the permission of the victim.

(3) Dissemination to the public of information allowed or required by this section may be done by newspaper, paper flyers, the internet, or any other media determined by the disseminating entity. In determining the method of dissemination, the disseminating entity should consider the level of risk posed by the offender to the public.

(4) The department of justice shall develop a model community notification policy to assist registration agencies in implementing the dissemination provisions of this section."

Section 6. Section 46-23-509, MCA, is amended to read:

"**46-23-509. Psychosexual evaluations and sexual offender designations.** (1) Prior to sentencing of a person convicted of a sexual offense, a sexual offender evaluator who has a license endorsement as provided for in 37-1-139 shall provide the court with a psychosexual evaluation report recommending one of the following levels of designation for the offender:

(a) level 1, the risk of a repeat sexual offense is low;

(b) level 2, the risk of a repeat sexual offense is moderate;

(c) level 3, the risk of a repeat sexual offense is high, there is a threat to public safety, and the sexual offender evaluator believes that the offender is a sexually violent predator.

(2) Upon sentencing the offender, the court shall:

(a) review the psychosexual evaluation report, any statement by a victim, and any statement by the offender;

(b) designate the offender as level 1, 2, or 3; and

(c) designate a level 3 offender as a sexually violent predator.

(3) An offender designated as a level 2 offender or given a level designation by another state, the

federal government, or the department under subsection (5) that is determined by the court to be similar to level 2 may petition the sentencing court or the district court for the judicial district in which the offender resides to change the offender's designation if the offender has enrolled in and successfully completed the treatment phase of either the prison's sexual offender treatment program or of an equivalent program approved by the department. After considering the petition, the court may change the offender's risk level designation if the court finds by clear and convincing evidence that the offender's risk of committing a repeat sexual offense has changed since the time sentence was imposed. The court shall impose one of the three risk levels specified in this section.

(4) If, at the time of sentencing, the sentencing judge did not apply a level designation to a sexual offender who is required to register under this part and who was sentenced prior to October 1, 1997, the department shall designate the offender as level 1, 2, or 3 when the offender is released from confinement.

(5) If an offense is covered by ~~46-23-502(9)(b)~~ 46-23-502(10)(q), the offender registers under 46-23-504(1)(c), and the offender was given a risk level designation after conviction by another state or the federal government, the department of justice may give the offender the risk level designation assigned by the other state or the federal government. All offenders convicted in another state or by the federal government who are not currently under the supervision of the department or the youth court and were not given a risk level designation after conviction shall provide to the department of justice all prior risk assessments and psychosexual evaluations done to evaluate the offender's risk to reoffend. Any offender without a risk assessment or psychosexual evaluation shall, at the offender's expense, undergo a psychosexual evaluation with a sexual offender evaluator who has a license endorsement as provided for in 37-1-139. The results of the psychosexual evaluation may be requested by the attorney general or a county attorney for purposes of petitioning a district court to assign a risk level designation.

(6) The lack of a fixed residence is a factor that may be considered by the sentencing court or by the department in determining the risk level to be assigned to an offender pursuant to this section.

(7) Upon obtaining information that indicates that a sexual offender who is required to register under this part does not have a level 1, 2, or 3 designation, the offender, the attorney general, the county attorney that prosecuted the offender and obtained a conviction for a sexual offense, or the county attorney for the county in which the offender resides may, at any time, petition the district court that sentenced the offender

for a sexual offense or the district court for the judicial district in which the offender resides to designate the offender as level 1, 2, or 3. Upon the filing of the petition, the court may order a psychosexual evaluation report at the petitioner's expense, or order that the results of all prior psychosexual evaluations be provided to all parties. The court shall provide the offender with an opportunity for a hearing prior to designating the offender. The petitioner shall provide the offender, the attorney general, and the county attorney that prosecuted the offender with notice of the petition and notice of the hearing. As provided in 46-23-506(2)(d), petitions for relief from registration under this part must be filed in the appropriate Montana district court. Orders or other documents granting relief from registration requirements that originated in other jurisdictions are not valid in Montana."

COORDINATION SECTION. **Section 7. Coordination instruction**. If both House Bill No. 112 and [this act] are passed and approved and both contain a section that amends 46-23-502, then the sections that amend 46-23-502 are void and 46-23-502 must be amended as follows:

"**46-23-502. Definitions.** As used in Title 45, chapter 5, part 3 and parts 5 through 7, 46-18-255, and this part, the following definitions apply:

(1) "Department" means the department of corrections provided for in 2-15-2301.

(2) "Foreign offenses" means a conviction for a sexual offense involving any of the conduct listed in this section that was obtained under the laws of Canada, the United Kingdom, Australia, or New Zealand, or under the laws of any foreign country when the United States department of state, in its country reports on human rights practices, has concluded that an independent judiciary generally or vigorously enforced the right to a fair trial in that country during the year in which the conviction was obtained.

~~(2)~~(3) "Mental abnormality" means a congenital or acquired condition that affects the mental, emotional, or volitional capacity of a person in a manner that predisposes the person to the commission of one or more sexual offenses to a degree that makes the person a menace to the health and safety of other persons.

~~(3)~~(4) "Municipality" means an entity that has incorporated as a city or town.

~~(4)~~(5) "Personality disorder" means a personality disorder as defined in the fourth edition of the Diagnostic and Statistical Manual of Mental Disorders adopted by the American psychiatric association.

~~(5)~~(6) "Predatory sexual offense" means a sexual offense committed against a stranger or against a

person with whom a relationship has been established or furthered for the primary purpose of victimization.

~~(6)~~(7) "Registration agency" means:

(a) if the offender resides in a municipality, the police department of that municipality; or

(b) if the offender resides in a place other than a municipality, the sheriff's office of the county in which the offender resides.

~~(7)~~(8) (a) "Residence" means the location at which a person regularly resides, regardless of the number of days or nights spent at that location, that can be located by a street address, including a house, apartment building, motel, hotel, or recreational or other vehicle.

(b) The term does not mean a homeless shelter.

~~(8)~~(9) "Sexual offender evaluator" means a person qualified under rules established by the department to conduct psychosexual evaluations of sexual offenders and sexually violent predators.

~~(9)~~(10) (a) "Sexual offense" means~~:~~ any violation, attempt, solicitation, or conspiracy to commit a violation, or flight after the attempt or commission of the following:

~~(a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-301 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-302 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-303 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-502 (if the offender is a professional licensed under Title 37 and commits the offense during any treatment, consultation, interview, or evaluation of a person's physical or mental condition, ailment, disease, or injury), 45-5-502(3) (if the victim is less than 16 years of age and the offender is 3 or more years older than the victim), 45-5-503(1), (3), or (4), 45-5-504(2)(c), 45-5-504(3) (if the victim is less than 16 years of age and the offender is 4 or more years older than the victim), 45-5-507 (if the victim is less than 18 years of age and the offender is 3 or more years older than the victim or if the victim is 12 years of age or younger and the offender is 18 years of age or older at the time of the offense), 45-5-508, 45-5-601(3), 45-5-602(3), 45-5-603(1)(b), (2)(b), or (2)(c), 45-5-625, 45-5-704, or 45-5-705; or~~

(i) 45-5-301, Unlawful restraint, if the victim is less than 18 years of age and the offender is not a parent of the victim;

(ii) 45-5-302, Kidnapping, if the victim is less than 18 years of age and the offender is not a parent of the victim;

(iii) 45-5-303, Aggravated kidnapping, if the victim is less than 18 years of age and the offender is not a parent of the victim;

(iv) 45-5-502(1), (2)(c), and (3), Sexual assault;

(v) 45-5-503, Sexual intercourse without consent;

(vi) 45-5-504(2)(c) and (3), Indecent exposure;

(vii) 45-5-507, Incest, if the victim is less than 18 years of age and the offender is 3 or more years older than the victim, or if the victim is 12 years of age or younger and the offender is 18 years of age or older at the time of the offense;

(viii) 45-5-508, Aggravated sexual intercourse without consent;

(ix) 45-5-601(2)(b) and (3), Prostitution;

(x) 45-5-622(2)(b)(ii), Endangering the welfare of children;

(xi) 45-5-625, Sexual abuse of children;

(xii) 45-5-627(1)(a), Ritual abuse of a minor;

(xiii) 45-5-705, Patronizing a victim of sex trafficking;

(xiv) 45-5-706, Aggravated sex trafficking;

(xv) [section 19 of House Bill No. 112], Child sex trafficking; or

~~(b)~~(xvi) any violation of a law of another state, a tribal government, ~~or~~ the federal government, or the military or a foreign entity that is reasonably equivalent to a violation listed in subsection ~~(9)(a)~~(10)(a)(i) through (10)(a)(xv) or for which the offender was required to register as a sexual offender after an adjudication or conviction.

(b) The term does not include the exceptions provided for in 45-5-501, 45-5-502, and 45-5-503.

~~(10)~~(11) "Sexual or violent offender" means a person who has been convicted of or, in youth court, found to have committed or been adjudicated for a sexual or violent offense.

~~(11)~~(12) "Sexually violent predator" means a person who:

(a) has been convicted of or, in youth court, found to have committed or been adjudicated for a sexual offense and who suffers from a mental abnormality or a personality disorder that makes the person likely to engage in predatory sexual offenses; or

(b) has been convicted of a sexual offense against a victim 12 years of age or younger and the

offender is 18 years of age or older.

~~(12)~~(13) "Transient" means an offender who has no residence.

~~(13)~~(14) "Violent offense" means:

(a) any violation of or attempt, solicitation, or conspiracy to commit a violation of;

(i) 45-5-102, Deliberate homicide;

(ii) 45-5-103, Mitigated deliberate homicide;

(iii) 45-5-202, Aggravated assault;

(iv) 45-5-206 (third or subsequent offense), Partner or family member assault;

(v) 45-5-210(1)(b), (1)(c), or (1)(d), Assault on a peace officer or judicial officer;

(vi) 45-5-212, Assault on a minor;

(vii) 45-5-213, Assault with a weapon;

(viii) 45-5-215, Strangulation of a partner or family member;

(ix) 45-5-302 (if the victim is not a minor), Kidnapping;

(x) 45-5-303 (if the victim is not a minor), Aggravated kidnapping;

(xi) 45-5-401, Robbery;

(xii) 45-6-103, Arson; or

(xiii) 45-9-132; Operation of unlawful clandestine laboratory; or

(b) any violation of a law of another state, a tribal government, ~~or~~ the federal government, or the military or a foreign entity reasonably equivalent to a violation listed in subsection ~~(13)(a)~~(14)(a)."

COORDINATION SECTION. **Section 8. Coordination instruction**. (1) If House Bill No. 112, House Bill No. 525, and [this act] are passed and approved and all three contain a section that amends 46-23-502, then the section in House Bill No. 525 that amends 46-23-502 is void and [section 7 of this act], amending 46-23-502, must be further amended so that 46-23-502(10)(a)(iv) reads: "(iv) 45-5-502(1), (2)(c), (3), and (4), Sexual assault;".

(2) If House Bill No. 112 is not passed and approved and House Bill No. 525 and [this act] are passed and approved, then the section in House Bill No. 525 that amends 46-23-502 is void and [section 1 of

this act], amending 46-23-502, must be further amended so that 46-23-502(10)(a)(iv) reads: "(iv) 45-5-502(1), (2)(c), (3), and (4), Sexual assault;".

COORDINATION SECTION. **Section 9. Coordination instruction**. (1) If House Bill No. 112, Senate Bill No. 345, and [this act] are passed and approved and all three contain a section that amends 46-23-502, then the section in Senate Bill No. 345 that amends 46-23-502 is void and [section 7 of this act], amending 46-23-502, must be further amended so that the definition of "sexual offense" in 46-23-502(10)(a) includes the following offense: 45-8-218, Deviate sexual conduct.

(2) If House Bill No. 112 is not passed and approved and Senate Bill No. 345 and [this act] are passed and approved, then the section in Senate Bill No. 345 that amends 46-23-502 is void and [section 1 of this act], amending 46-23-502, must be further amended so that the definition of "sexual offense" in 46-23-502(10)(a) includes the following offense: 45-8-218, Deviate sexual conduct.

- END -

SENATE BILL NO. 38

INTRODUCED BY B. BROWN

BY REQUEST OF THE DEPARTMENT OF JUSTICE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING STATUTES RELATED TO LEVEL DESIGNATIONS FOR SEXUAL OFFENDERS; PROVIDING DEFINITIONS; REQUIRING ADDITIONAL INFORMATION FROM OFFENDERS REGARDING ELECTRONIC AND COMMUNICATIONS DATA AND PROFESSIONAL LICENSES; REQUIRING NOTICE WHEN AN OFFENDER IS LEAVING THE STATE; PROVIDING OPPORTUNITIES FOR CERTAIN OFFENDERS TO BE REMOVED FROM THE REGISTRY; PROVIDING NOTICE REQUIREMENTS FOR PSYCHOSEXUAL EVALUATIONS; AND AMENDING SECTIONS 46-23-502, 46-23-504, 46-23-505, 46-23-506, 46-23-508, AND 46-23-509, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 46-23-502, MCA, is amended to read:

"**46-23-502. Definitions.** As used in Title 45, chapter 5, part 3 and parts 5 through 7, 46-18-255, and this part, the following definitions apply:

(1) "Department" means the department of corrections provided for in 2-15-2301.

(2) "Foreign offenses" means a conviction for a sexual offense involving any of the conduct listed in this section that was obtained under the laws of Canada, the United Kingdom, Australia, or New Zealand, or under the laws of any foreign country when the United States department of state, in its country reports on human rights practices, has concluded that an independent judiciary generally or vigorously enforced the right to a fair trial in that country during the year in which the conviction occurred.

~~(2)~~(3) "Mental abnormality" means a congenital or acquired condition that affects the mental, emotional, or volitional capacity of a person in a manner that predisposes the person to the commission of one or more sexual offenses to a degree that makes the person a menace to the health and safety of other persons.

~~(3)~~(4) "Municipality" means an entity that has incorporated as a city or town.

~~(4)~~(5) "Personality disorder" means a personality disorder as defined in the fourth edition of the Diagnostic and Statistical Manual of Mental Disorders adopted by the American psychiatric association.

~~(5)~~(6) "Predatory sexual offense" means a sexual offense committed against a stranger or against a person with whom a relationship has been established or furthered for the primary purpose of victimization.

~~(6)~~(7) "Registration agency" means:

(a) if the offender resides in a municipality, the police department of that municipality; or

(b) if the offender resides in a place other than a municipality, the sheriff's office of the county in which the offender resides.

~~(7)~~(8) (a) "Residence" means the location at which a person regularly resides, regardless of the number of days or nights spent at that location, that can be located by a street address, including a house, apartment building, motel, hotel, or recreational or other vehicle.

(b) The term does not mean a homeless shelter.

~~(8)~~(9) "Sexual offender evaluator" means a person qualified under rules established by the department to conduct psychosexual evaluations of sexual offenders and sexually violent predators.

~~(9)~~(10) (a) "Sexual offense" means~~:~~ any violation, attempt, solicitation, or conspiracy to commit a violation, or flight after the attempt or commission of the following:

~~(a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-301 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-302 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-303 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-502 (if the offender is a professional licensed under Title 37 and commits the offense during any treatment, consultation, interview, or evaluation of a person's physical or mental condition, ailment, disease, or injury), 45-5-502 (3) (if the victim is less than 16 years of age and the offender is 3 or more years older than the victim), 45-5-503 (1), (3), or (4), 45-5-504 (2)(c), 45-5-504 (3) (if the victim is less than 16 years of age and the offender is 4 or more years older than the victim), 45-5-507 (if the victim is less than 18 years of age and the offender is 3 or more years older than the victim or if the victim is 12 years of age or younger and the offender is 18 years of age or older at the time of the offense), 45-5-508, 45-5-601 (3), 45-5-602 (3), 45-5-603 (1)(b), (2)(b), or (2)(c), 45-5-625, 45-5-704, or 45-5-705 ; or~~

(i) 45-5-301, Unlawful restraint, if the victim is less than 18 years of age and the offender is not a parent of the victim;

(ii) 45-5-302, Kidnapping, if the victim is less than 18 years of age and the offender is not a parent of the victim;

(iii) 45-5-303, Aggravated kidnapping, if the victim is less than 18 years of age and the offender is not a parent of the victim;

(iv) 45-5-502~~(1),~~ (2)(c)~~,~~ AND (3), ~~(4), and (5),~~ Sexual assault;

(v) 45-5-503, Sexual intercourse without consent;

(vi) 45-5-504(2)(c) and (3), Indecent exposure;

(vii) 45-5-507, Incest, if the victim is less than 18 years of age and the offender is 3 or more years older than the victim, or if the victim is 12 years of age or younger and the offender is 18 years of age or older at the time of the offense;

(viii) 45-5-508, Aggravated sexual intercourse without consent;

(ix) 45-5-601(2)(b), (3), and (4) Prostitution;

(x) 45-5-602(3) and (4), Promoting prostitution;

(xi) 45-5-603, Aggravated promotion of prostitution;

(xii) 45-5-622(2)(b)(ii), Endangering welfare of children;

(xiii) 45-5-625, Sexual abuse of children;

(xiv) 45-5-627(1)(a), Ritual abuse of minor;

(xv) 45-5-704, Sexual servitude;

(xvi) 45-5-705, Patronizing victim of sexual servitude; or

~~(b)~~(xvii) any violation of a law of another state, a tribal government, ~~or~~ the federal government, or the military or a foreign entity that is reasonably equivalent to a violation listed in subsection ~~(9)(a)~~ (10)(a)(i) through (10)(a)(xvi) or for which the offender was required to register as a sexual offender after an adjudication or conviction.

(b) This term does not include the exceptions provided for in 45-5-501, 45-5-502, and 45-5-503.

~~(10)~~(11) "Sexual or violent offender" means a person who has been convicted of or, in youth court,

found to have committed or been adjudicated for a sexual or violent offense.

~~(11)~~(12) "Sexually violent predator" means a person who:

(a) has been convicted of or, in youth court, found to have committed or been adjudicated for a sexual offense and who suffers from a mental abnormality or a personality disorder that makes the person likely to engage in predatory sexual offenses; or

(b) has been convicted of a sexual offense against a victim 12 years of age or younger and the offender is 18 years of age or older.

~~(12)~~(13) "Transient" means an offender who has no residence.

~~(13)~~(14) "Violent offense" means:

(a) any violation of or attempt, solicitation, or conspiracy to commit a violation of:

(i) 45-5-102, Deliberate homicide;

(ii) 45-5-103, Mitigated deliberate homicide;

(iii) 45-5-202, Aggravated assault;

(iv) 45-5-206 (third or subsequent offense), Partner or family member assault;

(v) 45-5-210(1)(b), (1)(c), or (1)(d), Assault on a peace officer or judicial officer;

(vi) 45-5-212, Assault on a minor;

(vii) 45-5-213, Assault with weapon;

(viii) 45-5-215, Strangulation of partner or family member;

(ix) 45-5-302 (if the victim is not a minor), Kidnapping ;

(x) 45-5-303 (if the victim is not a minor), Aggravated kidnapping;

(xi) 45-5-401, Robbery;

(xii) 45-6-103, Arson; or

(xiii) 45-9-132, Operation of unlawful clandestine laboratory; or

(b) any violation of a law of another state, a tribal government, ~~or~~ the federal government, or the military or a foreign entity reasonably equivalent to a violation listed in subsection ~~(13)(a)~~ (14)(a)."

Section 2. Section 46-23-504, MCA, is amended to read:

"**46-23-504. Persons required to register -- procedure.** (1) Except as provided in 41-5-1513 and 45-5-503(5), a sexual or violent offender:

(a) shall register immediately upon conclusion of the sentencing hearing if the offender is not sentenced to confinement or is not sentenced to the department and placed in confinement by the department;

(b) must be registered as provided in 46-23-503 at least 10 days prior to release from confinement if sentenced to confinement or sentenced to the department and placed in confinement by the department;

(c) shall register within 3 business days of entering a county of this state for the purpose of residing or setting up a temporary residence for 10 days or more or for an aggregate period exceeding 30 days in a calendar year; and

(d) who is a transient shall register within 3 business days of entering a county of this state.

(2) Registration under subsection ~~(1)(a), (1)(c), or (1)(d)~~ (1) must be with the appropriate registration agency. If an offender registers with a police department, the department shall notify the sheriff's office of the county in which the municipality is located of the registration. The probation officer having supervision over an offender required to register under subsection (1)(a) shall verify the offender's registration status with the appropriate registration agency.

(3) At the time of registering, the offender shall sign a statement in writing giving the information required by subsections (3)(a) through ~~(3)(h)~~ (3)(k) and any other information required by the department of justice. The registration agency shall fingerprint the offender, unless the offender's fingerprints are on file with the department of justice, photograph the offender, and obtain a DNA sample from the offender. Within 3 days, the registration agency shall send copies of the statement, fingerprints, and photographs to the department of justice. The registration agency shall send the DNA sample to the department of justice for analysis and entry of the DNA record into the DNA identification index. The registration agency shall require an offender given a level 2 or level 3 designation to appear before the registration agency for a new photograph every year. The information collected from the offender at the time of registration must include:

(a) the name of the offender and any aliases used by the offender;

(b) the offender's social security number;

(c) the residence information required by subsection (4);

(d) the name and address of any business or other place where the offender is or will be an employee;

(e) the name and address of any school where the offender will be a student;

(f) the offender's driver's license number;

(g) the description, registration number or identifier, and license number of ~~any~~ all motor ~~vehicle~~ vehicles owned or operated by the offender; and

(h) ~~all of the offender's e-mail addresses and social media screen names.~~The following information related to the offender's internet activity:

(i) all e-mail addresses used by the offender;

(ii) all instant message addresses and identifiers;

(iii) all other designations or monikers used for self-identification in internet communications or postings; and

(iv) all designations used by the offender for the purpose of routing or self-identification in internet communications, postings, or social media accounts;

(i) any passports held or used by the offender. The department or its designee shall make a photocopy of the passports.

(j) all telephone numbers and any other designations used by the offender for the purposes of routing or self-identification in telephonic communications, including but not limited to:

(i) all cellular telephone numbers;

(ii) all landline telephone numbers; and

(iii) all voice over internet protocol telephone numbers; and

(k) all professional licenses, including the licensing number, licensing agency, and any other identifying information about a professional license issued to the offender that authorizes the offender to engage in an occupation or carry out a trade or business.

(4) (a) If, at the time of registration, the offender regularly resides in more than one county or municipality, the offender shall register with the registration agency of each county or municipality in which the offender resides. If an offender resides in more than one location within the same county or municipality, the

registration agency shall require the offender to provide all of the locations where the offender regularly resides and to designate one of them as the offender's primary residence.

(b) Registration of more than one residence pursuant to this section is an exception from the single residence rule provided in 1-1-215.

(5) A transient shall report monthly, in person, to the registration agency with which the transient registered pursuant to subsection (1)(d). The transient shall report on a day specified by the registration agency and during the normal business hours of that agency. On that day, the transient shall provide the registration agency with the information listed in subsections (3)(a) through ~~(3)(h)~~ (3)(k). The registration agency to which the transient reports may also require the transient to provide the locations where the transient stayed during the previous 30 days and may stay during the next 30 days.

(6) (a) The department of justice shall mail a registration verification form:

(i) each 90 days to an offender designated as a level 3 offender under 46-23-509;

(ii) each 180 days to an offender designated as a level 2 offender under 46-23-509; and

(iii) each year to a violent offender or an offender designated as a level 1 offender under 46-23-509.

(b) If the offender is a transient, the department of justice shall mail the offender's registration verification form to the registration agency with which the offender last registered.

(c) The form must require the offender's notarized signature. Within 10 days after receipt of the form, the offender shall complete the form and return it to the registration agency where the offender last registered or, if the offender was initially registered pursuant to subsection (1)(b), to the registration agency in the county or municipality in which the offender is located. A sexual offender shall return the form to the appropriate registration agency in person, and at the time that the sexual offender returns the registration verification form, the registration agency shall take a photograph of the offender and collect a DNA sample if one has not already been collected. The registration agency shall send the DNA sample to the department of justice for analysis and entry into the DNA identification index.

(7) Within 3 days after receipt of a registration verification form, the registration agency shall provide a copy of the form and most recent photograph to the department of justice.

(8) The offender is responsible, if able to pay, for costs associated with registration. The fees charged for registration may not exceed the actual costs of registration. The department of justice may adopt a rule establishing fees to cover registration costs incurred by the department of justice in maintaining registration and address verification records. The fees must be deposited in the general fund.

(9) The clerk of the district court in the county in which a person is convicted of a sexual or violent offense shall notify the sheriff in that county of the conviction within 10 days after entry of the judgment."

Section 3. Section 46-23-505, MCA, is amended to read:

"**46-23-505. Notice of change of name or residence or student, employment, or transient status -- duty to inform -- forwarding of information.** (1) If an offender required to register under this part has a change of name or residence or a change in student, employment, or transient status, the offender shall within 3 business days of the change appear in person and give notification of the change to the registration agency with whom the offender last registered or, if the offender was initially registered under 46-23-504(1)(b), to the registration agency for the county or municipality from which the offender is moving. The registration agency shall require the offender to appear before the registration agency for a new photograph every year.

(2) If an offender required to register under this part is a transient, the offender shall provide written notification to the registration agency with which the offender last registered or, if the offender initially registered pursuant to 46-23-504(1)(b), shall provide notice within 3 business days to the registration agency in the county or municipality in which the offender resides.

(3) Within 3 business days after receipt of the information concerning the new name or residence or a change in the student, employment, or transient status, the registration agency shall forward the information to the department of justice, which shall forward a copy of the information and photograph to:

(a) in the event of a change in residence, the registration agency for the county to which the offender moves and, if the offender lives in a municipality, the registration agency for that municipality to which the offender moves;

(b) in the event of a change of name or of student, employment, or transient status, the registration agency of the appropriate county or municipality.

(4) If an offender who is required to register under this part is physically absent from the offender's county of residence for more than 10 consecutive days, the offender shall register in the county where the offender is physically located on the 11th day even if the offender claims to maintain a residence, as defined in 46-23-502, in that county. The offender shall register again in the offender's county of residence when the offender returns to that county.

(5) If an offender is required to register under subsection (4), the offender shall register in any subsequent county where the offender is present for more than 24 hours until the offender registers again in the offender's county of residence.

(6) In the event an offender will be absent from this state for more than 7 days, the offender shall provide notice with the information required under this section in person to the registering agency no later than 3 days before their scheduled travel. The registering agency shall forward the information to the department of justice, which shall then notify the provided jurisdiction."

Section 4. Section 46-23-506, MCA, is amended to read:

"**46-23-506. ~~Duration~~ Duty of registration -- duration, frequency, reduction, and relief.** (1) A sexual offender required to register under this part shall register for the remainder of the sexual offender's life, except as provided in subsection (3) or during a period of time during which the sexual offender is in prison.

(2) (a) A violent offender required to register under this part shall register for the 10 years following release from confinement or, if not confined following sentencing, for the 10 years following the conclusion of the sentencing hearing and after registering for 10 years, is automatically relieved of the duty to register unless convicted as provided in subsection (2)(b).

(b) If convicted during the 10-year period provided in subsection (2)(a) of failing to register or keep registration current or of a felony, the violent offender shall register for the remainder of the violent offender's life unless relieved of the duty to register as provided in subsection ~~(3)~~ (2)(e).

(c) When ~~an~~ a violent offender is relieved of the duty to register under subsection (2)(a), the department of justice shall remove the violent offender from the registry.

(d) Petitions for relief from registration under this part must be filed in the appropriate Montana

district court. Orders or other documents granting relief from registration requirements that originated in other jurisdictions are not valid in Montana.

(e) Except as provided in subsection (5), at any time after 10 years of registration for a violent offender registered as provided in subsection (2)(b), a violent offender may petition the sentencing court or the district court for the judicial district in which the violent offender resides for an order relieving the violent offender of the duty to register. The petition must be served on the county attorney in the county where the petition is filed. Prior to a hearing on the petition, the county attorney shall mail a copy of the petition to the victim of the last offense for which the violent offender was convicted if the victim's address is reasonably available. The court shall consider any written or oral statements of the victim. The court may grant the petition on finding that:

(i) the violent offender has remained a law-abiding citizen; and

(ii) continued registration is not necessary for public protection and that relief from registration is in the best interests of society.

(3) Except as provided in subsection ~~(5)~~ (7), at any time after 10 years of registration for ~~a violent offender registered as provided in subsection (2)(b) or~~ a level 1 sexual offender and at any time after 25 years of registration for a level 2 sexual offender, an offender may petition the sentencing court or the district court for the judicial district in which the offender resides for an order relieving the offender of the duty to register. The petition must be served on the county attorney in the county where the petition is filed. Prior to a hearing on the petition, the county attorney shall mail a copy of the petition to the victim of the last offense for which the offender was convicted if the victim's address is reasonably available. The court shall consider any written or oral statements of the victim. The court may grant the petition ~~upon~~ on finding that:

(a) the offender has ~~remained a law-abiding citizen~~ maintained a clean record during their period of registration; and

(b) continued registration is not necessary for public protection and that relief from registration is in the best interests of society.

(4) A level 3 sexual offender may have their period of registration reduced to 25 years if the sexual offender was adjudicated delinquent of an offense as a juvenile that required level 3 sexual offender registration

and the sexual offender has maintained a clean record for 25 consecutive years.

(5) For the purposes of this section, the sexual offender has a clean record if, during the period of time in which the sexual offender was required to register as a sexual offender:

(a) the sexual offender was not convicted of any felony offense;

(b) the sexual offender was not convicted of any sexual offense;

(c) the sexual offender successfully completed, without revocation, any period of supervised release, probation, or parole; and

(d) the sexual offender has successfully completed an appropriate sexual offender treatment program.

~~(4)~~(6) The offender may move that all or part of the proceedings in a hearing under ~~subsection~~ subsections (2)(e) and (3) be closed to the public, or the judge may close them on the judge's own motion. If a proceeding under ~~subsection~~ subsections (2)(e) and (3) is closed to the public, the judge shall permit a victim of the offense to be present unless the judge determines that exclusion of the victim is necessary to protect the offender's right of privacy or the safety of the victim. If the victim is present, the judge, at the victim's request, shall permit the presence of an individual to provide support to the victim unless the judge determines that exclusion of the individual is necessary to protect the offender's right to privacy.

~~(5)~~(7) Subsection (3) does not apply to an offender who was convicted of:

(a) a violation of 45-5-503 if:

(i) the victim was compelled to submit by force, as defined in 45-5-501, against the victim or another; or

(ii) at the time the offense occurred, the victim was under 12 years of age;

(b) a violation of 45-5-507 if at the time the offense occurred the victim was under 12 years of age and the offender was 3 or more years older than the victim;

(c) a second or subsequent sexual or violent offense that requires registration; or

(d) a sexual offense and was designated as a sexually violent predator under 46-23-509."

Section 5. Section 46-23-508, MCA, is amended to read:

"**46-23-508. Dissemination of information.** (1) Information maintained under this part is confidential criminal justice information, as defined in 44-5-103, except that:

(a) the name and address of a registered sexual or violent offender are public criminal justice information, as defined in 44-5-103; and

(b) the department of justice or the registration agency shall release any offender registration information that it possesses relevant to the public if the department of justice or the registration agency determines that a registered offender is a risk to the safety of the community and that disclosure of the registration information that it possesses may protect the public and, at a minimum:

(i) if the offender is also a violent offender, the department of justice shall and the registration agency may disseminate to the victim and the public:

(A) the offender's name; and

(B) the offenses for which the offender is required to register under this part;

(ii) if ~~an~~ a sexual offender was given a level 1 designation under 46-23-509, the department of justice shall and the registration agency may disseminate to the victim and the public:

(A) the offender's address;

(B) the name, photograph, and physical description of the offender;

(C) the offender's date of birth; ~~and~~

(D) the offenses for which the offender is required to register under this part;

(E) the offender's employer address; and

(F) the offender's post-secondary school address.

(iii) if ~~an~~ a sexual offender was given a level 1 designation and committed an offense against a minor or was given a level 2 designation under 46-23-509, the department of justice shall and the registration agency may disseminate to the victim and the public:

(A) the offender's address;

(B) the type of victim targeted by the offense;

(C) the name, photograph, and physical description of the offender;

(D) the offender's date of birth;

(E) the license plate number and a description of any motor vehicle owned or operated by the offender;

(F) the offenses for which the offender is required to register under this part; ~~and~~

(G) the offender's employer address;

(H) the offender's post-secondary school address; and

~~(G)~~(I) any conditions imposed by the court upon the offender for the safety of the public; and

(iv) if ~~an~~ a sexual offender was given a level 3 designation under 46-23-509, the department of justice and the registration agency shall give the victim and the public notification that includes the information contained in subsection (1)(b)(iii). The notification must also include the date of the offender's release from confinement or, if not confined, the date the offender was sentenced, with a notation that the offender was not confined, and must include the community in which the offense occurred.

(c) prior to release of information under subsection (1)(b), a registration agency may, in its sole discretion, request an in camera review by a district court of the determination by the registration agency under subsection (1)(b). The court shall review a request under this subsection (1)(c) and shall, as soon as possible, render its opinion so that release of the information is not delayed beyond release of the offender from confinement.

(2) The identity of a victim of an offense for which registration is required under this part may not be released by a registration agency without the permission of the victim.

(3) Dissemination to the public of information allowed or required by this section may be done by newspaper, paper flyers, the internet, or any other media determined by the disseminating entity. In determining the method of dissemination, the disseminating entity should consider the level of risk posed by the offender to the public.

(4) The department of justice shall develop a model community notification policy to assist registration agencies in implementing the dissemination provisions of this section."

Section 6. Section 46-23-509, MCA, is amended to read:

"**46-23-509. Psychosexual evaluations and sexual offender designations.** (1) Prior to sentencing

of a person convicted of a sexual offense, a sexual offender evaluator who has a license endorsement as provided for in 37-1-139 shall provide the court with a psychosexual evaluation report recommending one of the following levels of designation for the offender:

(a) level 1, the risk of a repeat sexual offense is low;

(b) level 2, the risk of a repeat sexual offense is moderate;

(c) level 3, the risk of a repeat sexual offense is high, there is a threat to public safety, and the sexual offender evaluator believes that the offender is a sexually violent predator.

(2) Upon sentencing the offender, the court shall:

(a) review the psychosexual evaluation report, any statement by a victim, and any statement by the offender;

(b) designate the offender as level 1, 2, or 3; and

(c) designate a level 3 offender as a sexually violent predator.

(3) An offender designated as a level 2 offender or given a level designation by another state, the federal government, or the department under subsection (5) that is determined by the court to be similar to level 2 may petition the sentencing court or the district court for the judicial district in which the offender resides to change the offender's designation if the offender has enrolled in and successfully completed the treatment phase of either the prison's sexual offender treatment program or of an equivalent program approved by the department. After considering the petition, the court may change the offender's risk level designation if the court finds by clear and convincing evidence that the offender's risk of committing a repeat sexual offense has changed since the time sentence was imposed. The court shall impose one of the three risk levels specified in this section.

(4) If, at the time of sentencing, the sentencing judge did not apply a level designation to a sexual offender who is required to register under this part and who was sentenced prior to October 1, 1997, the department shall designate the offender as level 1, 2, or 3 when the offender is released from confinement.

(5) If an offense is covered by ~~46-23-502(9)(b)~~ 46-23-502(10)(q), the offender registers under 46-23-504(1)(c), and the offender was given a risk level designation after conviction by another state or the federal government, the department of justice may give the offender the risk level designation assigned by the other

state or the federal government. All offenders convicted in another state or by the federal government who are not currently under the supervision of the department or the youth court and were not given a risk level designation after conviction shall provide to the department of justice all prior risk assessments and psychosexual evaluations done to evaluate the offender's risk to reoffend. Any offender without a risk assessment or psychosexual evaluation shall, at the offender's expense, undergo a psychosexual evaluation with a sexual offender evaluator who has a license endorsement as provided for in 37-1-139. The results of the psychosexual evaluation may be requested by the attorney general or a county attorney for purposes of petitioning a district court to assign a risk level designation.

(6) The lack of a fixed residence is a factor that may be considered by the sentencing court or by the department in determining the risk level to be assigned to an offender pursuant to this section.

(7) Upon obtaining information that indicates that a sexual offender who is required to register under this part does not have a level 1, 2, or 3 designation, the offender, the attorney general, the county attorney that prosecuted the offender and obtained a conviction for a sexual offense, or the county attorney for the county in which the offender resides may, at any time, petition the district court that sentenced the offender for a sexual offense or the district court for the judicial district in which the offender resides to designate the offender as level 1, 2, or 3. Upon the filing of the petition, the court may order a psychosexual evaluation report at the petitioner's expense, or order that the results of all prior psychosexual evaluations be provided to all parties. The court shall provide the offender with an opportunity for a hearing prior to designating the offender. The petitioner shall provide the offender, the attorney general, and the county attorney that prosecuted the offender with notice of the petition and notice of the hearing. As provided in 46-23-506(2)(d), petitions for relief from registration under this part must be filed in the appropriate Montana district court. Orders or other documents granting relief from registration requirements that originated in other jurisdictions are not valid in Montana."

COORDINATION SECTION. **SECTION 7. COORDINATION INSTRUCTION.** IF BOTH HOUSE BILL NO. 112 AND [THIS ACT] ARE PASSED AND APPROVED AND BOTH CONTAIN A SECTION THAT AMENDS 46-23-502, THEN THE SECTIONS THAT AMEND 46-23-502 ARE VOID AND 46-23-502 MUST BE AMENDED AS FOLLOWS:

"**46-23-502. Definitions.** As used in Title 45, chapter 5, part 3 and parts 5 through 7, 46-18-255, and this part, the following definitions apply:

(1) "Department" means the department of corrections provided for in 2-15-2301.

(2) "Foreign offenses" means a conviction for a sexual offense involving any of the conduct listed in this section that was obtained under the laws of Canada, the United Kingdom, Australia, or New Zealand, or under the laws of any foreign country when the United States department of state, in its country reports on human rights practices, has concluded that an independent judiciary generally or vigorously enforced the right to a fair trial in that country during the year in which the conviction was obtained.

~~(2)~~(3) "Mental abnormality" means a congenital or acquired condition that affects the mental, emotional, or volitional capacity of a person in a manner that predisposes the person to the commission of one or more sexual offenses to a degree that makes the person a menace to the health and safety of other persons.

~~(3)~~(4) "Municipality" means an entity that has incorporated as a city or town.

~~(4)~~(5) "Personality disorder" means a personality disorder as defined in the fourth edition of the Diagnostic and Statistical Manual of Mental Disorders adopted by the American psychiatric association.

~~(5)~~(6) "Predatory sexual offense" means a sexual offense committed against a stranger or against a person with whom a relationship has been established or furthered for the primary purpose of victimization.

~~(6)~~(7) "Registration agency" means:

(a) if the offender resides in a municipality, the police department of that municipality; or

(b) if the offender resides in a place other than a municipality, the sheriff's office of the county in which the offender resides.

~~(7)~~(8) (a) "Residence" means the location at which a person regularly resides, regardless of the number of days or nights spent at that location, that can be located by a street address, including a house, apartment building, motel, hotel, or recreational or other vehicle.

(b) The term does not mean a homeless shelter.

~~(8)~~(9) "Sexual offender evaluator" means a person qualified under rules established by the department to conduct psychosexual evaluations of sexual offenders and sexually violent predators.

~~(9)~~(10) (a) "Sexual offense" means~~:~~ any violation, attempt, solicitation, or conspiracy to commit a

violation, or flight after the attempt or commission of the following:

~~(a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-301 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-302 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-303 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-502 (if the offender is a professional licensed under Title 37 and commits the offense during any treatment, consultation, interview, or evaluation of a person's physical or mental condition, ailment, disease, or injury), 45-5-502 (3) (if the victim is less than 16 years of age and the offender is 3 or more years older than the victim), 45-5-503 (1), (3), or (4), 45-5-504 (2)(c), 45-5-504 (3) (if the victim is less than 16 years of age and the offender is 4 or more years older than the victim), 45-5-507 (if the victim is less than 18 years of age and the offender is 3 or more years older than the victim or if the victim is 12 years of age or younger and the offender is 18 years of age or older at the time of the offense), 45-5-508, 45-5-601 (3), 45-5-602 (3), 45-5-603 (1)(b), (2)(b), or (2)(c), 45-5-625, 45-5-704, or 45-5-705 ; or~~

(i) 45-5-301, Unlawful restraint, if the victim is less than 18 years of age and the offender is not a parent of the victim;

(ii) 45-5-302, Kidnapping, if the victim is less than 18 years of age and the offender is not a parent of the victim;

(iii) 45-5-303, Aggravated kidnapping, if the victim is less than 18 years of age and the offender is not a parent of the victim;

(iv) 45-5-502~~(1),~~ (2)(c)~~,~~ and (3), Sexual assault;

(v) 45-5-503, Sexual intercourse without consent;

(vi) 45-5-504(2)(c) and (3), Indecent exposure;

(vii) 45-5-507, Incest, if the victim is less than 18 years of age and the offender is 3 or more years older than the victim, or if the victim is 12 years of age or younger and the offender is 18 years of age or older at the time of the offense;

(viii) 45-5-508, Aggravated sexual intercourse without consent;

(ix) 45-5-601(2)(b) and (3), Prostitution;

(x) 45-5-622(2)(b)(ii), Endangering the welfare of children;

(xi) 45-5-625, Sexual abuse of children;

(xii) 45-5-627(1)(a), Ritual abuse of a minor;

(xiii) 45-5-705, Patronizing a victim of sex trafficking;

(xiv) 45-5-706, Aggravated sex trafficking;

(xv) [section 19 of House Bill No. 112], Child sex trafficking; or

~~(b)~~(xvi) any violation of a law of another state, a tribal government, ~~or~~ the federal government, or the military or a foreign entity that is reasonably equivalent to a violation listed in subsection ~~(9)(a)~~ (10)(a)(i) through (10)(a)(xv) or for which the offender was required to register as a sexual offender after an adjudication or conviction.

(b) The term does not include the exceptions provided for in 45-5-501, 45-5-502, and 45-5-503.

~~(10)~~(11) "Sexual or violent offender" means a person who has been convicted of or, in youth court, found to have committed or been adjudicated for a sexual or violent offense.

~~(11)~~(12) "Sexually violent predator" means a person who:

(a) has been convicted of or, in youth court, found to have committed or been adjudicated for a sexual offense and who suffers from a mental abnormality or a personality disorder that makes the person likely to engage in predatory sexual offenses; or

(b) has been convicted of a sexual offense against a victim 12 years of age or younger and the offender is 18 years of age or older.

~~(12)~~(13) "Transient" means an offender who has no residence.

~~(13)~~(14) "Violent offense" means:

(a) any violation of or attempt, solicitation, or conspiracy to commit a violation of;

(i) 45-5-102, Deliberate homicide;

(ii) 45-5-103, Mitigated deliberate homicide;

(iii) 45-5-202, Aggravated assault;

(iv) 45-5-206 (third or subsequent offense), Partner or family member assault;

(v) 45-5-210(1)(b), (1)(c), or (1)(d), Assault on a peace officer or judicial officer;

(vi) 45-5-212, Assault on a minor;

(vii) 45-5-213, Assault with a weapon;

(viii) 45-5-215, Strangulation of a partner or family member;

(ix) 45-5-302 (if the victim is not a minor), Kidnapping;

(x) 45-5-303 (if the victim is not a minor), Aggravated kidnapping;

(xi) 45-5-401, Robbery;

(xii) 45-6-103, Arson; or

(xiii) 45-9-132; Operation of unlawful clandestine laboratory; or

(b) any violation of a law of another state, a tribal government, ~~or~~ the federal government, or the military or a foreign entity reasonably equivalent to a violation listed in subsection ~~(13)(a)~~ (14)(a)."

COORDINATION SECTION. **SECTION 8. COORDINATION INSTRUCTION.** (1) IF HOUSE BILL NO. 112, HOUSE BILL NO. 525, AND [THIS ACT] ARE PASSED AND APPROVED AND ALL THREE CONTAIN A SECTION THAT AMENDS 46-23-502, THEN THE SECTION IN HOUSE BILL NO. 525 THAT AMENDS 46-23-502 IS VOID AND [SECTION 7 OF THIS ACT], AMENDING 46-23-502, MUST BE FURTHER AMENDED SO THAT 46-23-502(10)(A)(IV) READS:

"(IV) 45-5-502~~(1),~~ (2)(C), (3), AND (4), SEXUAL ASSAULT;".

(2) IF HOUSE BILL NO. 112 IS NOT PASSED AND APPROVED AND HOUSE BILL NO. 525 AND [THIS ACT] ARE PASSED AND APPROVED, THEN THE SECTION IN HOUSE BILL NO. 525 THAT AMENDS 46-23-502 IS VOID AND [SECTION 1 OF THIS ACT], AMENDING 46-23-502, MUST BE FURTHER AMENDED SO THAT 46-23-502(10)(A)(IV) READS:

"(IV) 45-5-502(1), (2)(C), (3), AND (4), SEXUAL ASSAULT;".

COORDINATION SECTION. **SECTION 9. COORDINATION INSTRUCTION.** (1) IF HOUSE BILL NO. 112, SENATE BILL NO. 345, AND [THIS ACT] ARE PASSED AND APPROVED AND ALL THREE CONTAIN A SECTION THAT AMENDS 46-23-502, THEN THE SECTION IN SENATE BILL NO. 345 THAT AMENDS 46-23-502 IS VOID AND [SECTION 7 OF THIS ACT], AMENDING 46-23-502, MUST BE FURTHER AMENDED SO THAT THE DEFINITION OF "SEXUAL OFFENSE" IN 46-23-502(10)(A) INCLUDES THE FOLLOWING OFFENSE:

45-8-218, DEVIATE SEXUAL CONDUCT.

(2) IF HOUSE BILL NO. 112 IS NOT PASSED AND APPROVED AND SENATE BILL NO. 345 AND [THIS ACT] ARE

PASSED AND APPROVED, THEN THE SECTION IN SENATE BILL NO. 345 THAT AMENDS 46-23-502 IS VOID AND [SECTION 1 OF THIS ACT], AMENDING 46-23-502, MUST BE FURTHER AMENDED SO THAT THE DEFINITION OF "SEXUAL OFFENSE" IN 46-23-502(10)(A) INCLUDES THE FOLLOWING OFFENSE:

45-8-218, DEVIATE SEXUAL CONDUCT.

- END -

AMEND

SENATE BILL NO. 38

INTRODUCED BY B. BROWN

BY REQUEST OF THE DEPARTMENT OF JUSTICE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING STATUTES RELATED TO LEVEL DESIGNATIONS FOR SEXUAL OFFENDERS; PROVIDING DEFINITIONS; REQUIRING ADDITIONAL INFORMATION FROM OFFENDERS REGARDING ELECTRONIC AND COMMUNICATIONS DATA AND PROFESSIONAL LICENSES; REQUIRING NOTICE WHEN AN OFFENDER IS LEAVING THE STATE; PROVIDING OPPORTUNITIES FOR CERTAIN OFFENDERS TO BE REMOVED FROM THE REGISTRY; PROVIDING NOTICE REQUIREMENTS FOR PSYCHOSEXUAL EVALUATIONS; AND AMENDING SECTIONS 46-23-502, 46-23-504, 46-23-505, 46-23-506, 46-23-508, AND 46-23-509, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 46-23-502, MCA, is amended to read:

"**46-23-502. Definitions.** As used in Title 45, chapter 5, part 3 and parts 5 through 7, 46-18-255, and this part, the following definitions apply:

(1) "Department" means the department of corrections provided for in 2-15-2301.

(2) "Foreign offenses" means a conviction for a sexual offense involving any of the conduct listed in this section that was obtained under the laws of Canada, the United Kingdom, Australia, or New Zealand, or under the laws of any foreign country when the United States department of state, in its country reports on human rights practices, has concluded that an independent judiciary generally or vigorously enforced the right to a fair trial in that country during the year in which the conviction occurred.

~~(2)~~(3) "Mental abnormality" means a congenital or acquired condition that affects the mental, emotional, or volitional capacity of a person in a manner that predisposes the person to the commission of one or more sexual offenses to a degree that makes the person a menace to the health and safety of other persons.

~~(3)~~(4) "Municipality" means an entity that has incorporated as a city or town.

~~(4)~~(5) "Personality disorder" means a personality disorder as defined in the fourth edition of the Diagnostic and Statistical Manual of Mental Disorders adopted by the American psychiatric association.

~~(5)~~(6) "Predatory sexual offense" means a sexual offense committed against a stranger or against a person with whom a relationship has been established or furthered for the primary purpose of victimization.

~~(6)~~(7) "Registration agency" means:

(a) if the offender resides in a municipality, the police department of that municipality; or

(b) if the offender resides in a place other than a municipality, the sheriff's office of the county in which the offender resides.

~~(7)~~(8) (a) "Residence" means the location at which a person regularly resides, regardless of the number of days or nights spent at that location, that can be located by a street address, including a house, apartment building, motel, hotel, or recreational or other vehicle.

(b) The term does not mean a homeless shelter.

~~(8)~~(9) "Sexual offender evaluator" means a person qualified under rules established by the department to conduct psychosexual evaluations of sexual offenders and sexually violent predators.

~~(9)~~(10) (a) "Sexual offense" means~~:~~ any violation, attempt, solicitation, or conspiracy to commit a violation, or flight after the attempt or commission of the following:

~~(a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-301 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-302 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-303 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-502 (if the offender is a professional licensed under Title 37 and commits the offense during any treatment, consultation, interview, or evaluation of a person's physical or mental condition, ailment, disease, or injury), 45-5-502 (3) (if the victim is less than 16 years of age and the offender is 3 or more years older than the victim), 45-5-503 (1), (3), or (4), 45-5-504 (2)(c), 45-5-504 (3) (if the victim is less than 16 years of age and the offender is 4 or more years older than the victim), 45-5-507 (if the victim is less than 18 years of age and the offender is 3 or more years older than the victim or if the victim is 12 years of age or younger and the offender is 18 years of age or older at the time of the offense), 45-5-508, 45-5-601 (3), 45-5-602 (3), 45-5-603 (1)(b), (2)(b), or (2)(c), 45-5-625, 45-5-704, or 45-5-705 ; or~~

(i) 45-5-301, Unlawful restraint, if the victim is less than 18 years of age and the offender is not a parent of the victim;

(ii) 45-5-302, Kidnapping, if the victim is less than 18 years of age and the offender is not a parent of the victim;

(iii) 45-5-303, Aggravated kidnapping, if the victim is less than 18 years of age and the offender is not a parent of the victim;

(iv) 45-5-502~~(1),~~ (2)(c)~~,~~ AND (3), ~~(4), and (5),~~ Sexual assault;

(v) 45-5-503, Sexual intercourse without consent;

(vi) 45-5-504(2)(c) and (3), Indecent exposure;

(vii) 45-5-507, Incest, if the victim is less than 18 years of age and the offender is 3 or more years older than the victim, or if the victim is 12 years of age or younger and the offender is 18 years of age or older at the time of the offense;

(viii) 45-5-508, Aggravated sexual intercourse without consent;

(ix) 45-5-601(2)(b), (3), and (4) Prostitution;

(x) 45-5-602(3) and (4), Promoting prostitution;

(xi) 45-5-603, Aggravated promotion of prostitution;

(xii) 45-5-622(2)(b)(ii), Endangering welfare of children;

(xiii) 45-5-625, Sexual abuse of children;

(xiv) 45-5-627(1)(a), Ritual abuse of minor;

(xv) 45-5-704, Sexual servitude;

(xvi) 45-5-705, Patronizing victim of sexual servitude; or

~~(b)~~(xvii) any violation of a law of another state, a tribal government, ~~or~~ the federal government, or the military or a foreign entity that is reasonably equivalent to a violation listed in subsection ~~(9)(a)~~ (10)(a)(i) through (10)(a)(xvi) or for which the offender was required to register as a sexual offender after an adjudication or conviction.

(b) This term does not include the exceptions provided for in 45-5-501, 45-5-502, and 45-5-503.

~~(10)~~(11) "Sexual or violent offender" means a person who has been convicted of or, in youth court,

found to have committed or been adjudicated for a sexual or violent offense.

~~(11)~~(12) "Sexually violent predator" means a person who:

(a) has been convicted of or, in youth court, found to have committed or been adjudicated for a sexual offense and who suffers from a mental abnormality or a personality disorder that makes the person likely to engage in predatory sexual offenses; or

(b) has been convicted of a sexual offense against a victim 12 years of age or younger and the offender is 18 years of age or older.

~~(12)~~(13) "Transient" means an offender who has no residence.

~~(13)~~(14) "Violent offense" means:

(a) any violation of or attempt, solicitation, or conspiracy to commit a violation of:

(i) 45-5-102, Deliberate homicide;

(ii) 45-5-103, Mitigated deliberate homicide;

(iii) 45-5-202, Aggravated assault;

(iv) 45-5-206 (third or subsequent offense), Partner or family member assault;

(v) 45-5-210(1)(b), (1)(c), or (1)(d), Assault on a peace officer or judicial officer;

(vi) 45-5-212, Assault on a minor;

(vii) 45-5-213, Assault with weapon;

(viii) 45-5-215, Strangulation of partner or family member;

(ix) 45-5-302 (if the victim is not a minor), Kidnapping ;

(x) 45-5-303 (if the victim is not a minor), Aggravated kidnapping;

(xi) 45-5-401, Robbery;

(xii) 45-6-103, Arson; or

(xiii) 45-9-132, Operation of unlawful clandestine laboratory; or

(b) any violation of a law of another state, a tribal government, ~~or~~ the federal government, or the military or a foreign entity reasonably equivalent to a violation listed in subsection ~~(13)(a)~~ (14)(a)."

Section 2. Section 46-23-504, MCA, is amended to read:

"**46-23-504. Persons required to register -- procedure.** (1) Except as provided in 41-5-1513 and 45-5-503(5), a sexual or violent offender:

(a) shall register immediately upon conclusion of the sentencing hearing if the offender is not sentenced to confinement or is not sentenced to the department and placed in confinement by the department;

(b) must be registered as provided in 46-23-503 at least 10 days prior to release from confinement if sentenced to confinement or sentenced to the department and placed in confinement by the department;

(c) shall register within 3 business days of entering a county of this state for the purpose of residing or setting up a temporary residence for 10 days or more or for an aggregate period exceeding 30 days in a calendar year; and

(d) who is a transient shall register within 3 business days of entering a county of this state.

(2) Registration under subsection ~~(1)(a), (1)(c), or (1)(d)~~ (1) must be with the appropriate registration agency. If an offender registers with a police department, the department shall notify the sheriff's office of the county in which the municipality is located of the registration. The probation officer having supervision over an offender required to register under subsection (1)(a) shall verify the offender's registration status with the appropriate registration agency.

(3) At the time of registering, the offender shall sign a statement in writing giving the information required by subsections (3)(a) through ~~(3)(h)~~ (3)(k) and any other information required by the department of justice. The registration agency shall fingerprint the offender, unless the offender's fingerprints are on file with the department of justice, photograph the offender, and obtain a DNA sample from the offender. Within 3 days, the registration agency shall send copies of the statement, fingerprints, and photographs to the department of justice. The registration agency shall send the DNA sample to the department of justice for analysis and entry of the DNA record into the DNA identification index. The registration agency shall require an offender given a level 2 or level 3 designation to appear before the registration agency for a new photograph every year. The information collected from the offender at the time of registration must include:

(a) the name of the offender and any aliases used by the offender;

(b) the offender's social security number;

(c) the residence information required by subsection (4);

(d) the name and address of any business or other place where the offender is or will be an employee;

(e) the name and address of any school where the offender will be a student;

(f) the offender's driver's license number;

(g) the description, registration number or identifier, and license number of ~~any~~ all motor ~~vehicle~~ vehicles owned or operated by the offender; and

(h) ~~all of the offender's e-mail addresses and social media screen names.~~The following information related to the offender's internet activity:

(i) all e-mail addresses used by the offender;

(ii) all instant message addresses and identifiers;

(iii) all other designations or monikers used for self-identification in internet communications or postings; and

(iv) all designations used by the offender for the purpose of routing or self-identification in internet communications, postings, or social media accounts;

(i) any passports held or used by the offender. The department or its designee shall make a photocopy of the passports.

(j) all telephone numbers and any other designations used by the offender for the purposes of routing or self-identification in telephonic communications, including but not limited to:

(i) all cellular telephone numbers;

(ii) all landline telephone numbers; and

(iii) all voice over internet protocol telephone numbers; and

(k) all professional licenses, including the licensing number, licensing agency, and any other identifying information about a professional license issued to the offender that authorizes the offender to engage in an occupation or carry out a trade or business.

(4) (a) If, at the time of registration, the offender regularly resides in more than one county or municipality, the offender shall register with the registration agency of each county or municipality in which the offender resides. If an offender resides in more than one location within the same county or municipality, the

registration agency shall require the offender to provide all of the locations where the offender regularly resides and to designate one of them as the offender's primary residence.

(b) Registration of more than one residence pursuant to this section is an exception from the single residence rule provided in 1-1-215.

(5) A transient shall report monthly, in person, to the registration agency with which the transient registered pursuant to subsection (1)(d). The transient shall report on a day specified by the registration agency and during the normal business hours of that agency. On that day, the transient shall provide the registration agency with the information listed in subsections (3)(a) through ~~(3)(h)~~ (3)(k). The registration agency to which the transient reports may also require the transient to provide the locations where the transient stayed during the previous 30 days and may stay during the next 30 days.

(6) (a) The department of justice shall mail a registration verification form:

(i) each 90 days to an offender designated as a level 3 offender under 46-23-509;

(ii) each 180 days to an offender designated as a level 2 offender under 46-23-509; and

(iii) each year to a violent offender or an offender designated as a level 1 offender under 46-23-509.

(b) If the offender is a transient, the department of justice shall mail the offender's registration verification form to the registration agency with which the offender last registered.

(c) The form must require the offender's notarized signature. Within 10 days after receipt of the form, the offender shall complete the form and return it to the registration agency where the offender last registered or, if the offender was initially registered pursuant to subsection (1)(b), to the registration agency in the county or municipality in which the offender is located. A sexual offender shall return the form to the appropriate registration agency in person, and at the time that the sexual offender returns the registration verification form, the registration agency shall take a photograph of the offender and collect a DNA sample if one has not already been collected. The registration agency shall send the DNA sample to the department of justice for analysis and entry into the DNA identification index.

(7) Within 3 days after receipt of a registration verification form, the registration agency shall provide a copy of the form and most recent photograph to the department of justice.

(8) The offender is responsible, if able to pay, for costs associated with registration. The fees charged for registration may not exceed the actual costs of registration. The department of justice may adopt a rule establishing fees to cover registration costs incurred by the department of justice in maintaining registration and address verification records. The fees must be deposited in the general fund.

(9) The clerk of the district court in the county in which a person is convicted of a sexual or violent offense shall notify the sheriff in that county of the conviction within 10 days after entry of the judgment."

Section 3. Section 46-23-505, MCA, is amended to read:

"**46-23-505. Notice of change of name or residence or student, employment, or transient status -- duty to inform -- forwarding of information.** (1) If an offender required to register under this part has a change of name or residence or a change in student, employment, or transient status, the offender shall within 3 business days of the change appear in person and give notification of the change to the registration agency with whom the offender last registered or, if the offender was initially registered under 46-23-504(1)(b), to the registration agency for the county or municipality from which the offender is moving. The registration agency shall require the offender to appear before the registration agency for a new photograph every year.

(2) If an offender required to register under this part is a transient, the offender shall provide written notification to the registration agency with which the offender last registered or, if the offender initially registered pursuant to 46-23-504(1)(b), shall provide notice within 3 business days to the registration agency in the county or municipality in which the offender resides.

(3) Within 3 business days after receipt of the information concerning the new name or residence or a change in the student, employment, or transient status, the registration agency shall forward the information to the department of justice, which shall forward a copy of the information and photograph to:

(a) in the event of a change in residence, the registration agency for the county to which the offender moves and, if the offender lives in a municipality, the registration agency for that municipality to which the offender moves;

(b) in the event of a change of name or of student, employment, or transient status, the registration agency of the appropriate county or municipality.

(4) If an offender who is required to register under this part is physically absent from the offender's county of residence for more than 10 consecutive days, the offender shall register in the county where the offender is physically located on the 11th day even if the offender claims to maintain a residence, as defined in 46-23-502, in that county. The offender shall register again in the offender's county of residence when the offender returns to that county.

(5) If an offender is required to register under subsection (4), the offender shall register in any subsequent county where the offender is present for more than 24 hours until the offender registers again in the offender's county of residence.

(6) In the event an offender will be absent from this state for more than 7 days, the offender shall provide notice with the information required under this section in person to the registering agency no later than 3 days before their scheduled travel. The registering agency shall forward the information to the department of justice, which shall then notify the provided jurisdiction."

Section 4. Section 46-23-506, MCA, is amended to read:

"**46-23-506. ~~Duration~~ Duty of registration -- duration, frequency, reduction, and relief.** (1) A sexual offender required to register under this part shall register for the remainder of the sexual offender's life, except as provided in subsection (3) or during a period of time during which the sexual offender is in prison.

(2) (a) A violent offender required to register under this part shall register for the 10 years following release from confinement or, if not confined following sentencing, for the 10 years following the conclusion of the sentencing hearing and after registering for 10 years, is automatically relieved of the duty to register unless convicted as provided in subsection (2)(b).

(b) If convicted during the 10-year period provided in subsection (2)(a) of failing to register or keep registration current or of a felony, the violent offender shall register for the remainder of the violent offender's life unless relieved of the duty to register as provided in subsection ~~(3)~~ (2)(e).

(c) When ~~an~~ a violent offender is relieved of the duty to register under subsection (2)(a), the department of justice shall remove the violent offender from the registry.

(d) Petitions for relief from registration under this part must be filed in the appropriate Montana

district court. Orders or other documents granting relief from registration requirements that originated in other jurisdictions are not valid in Montana.

(e) Except as provided in subsection (5), at any time after 10 years of registration for a violent offender registered as provided in subsection (2)(b), a violent offender may petition the sentencing court or the district court for the judicial district in which the violent offender resides for an order relieving the violent offender of the duty to register. The petition must be served on the county attorney in the county where the petition is filed. Prior to a hearing on the petition, the county attorney shall mail a copy of the petition to the victim of the last offense for which the violent offender was convicted if the victim's address is reasonably available. The court shall consider any written or oral statements of the victim. The court may grant the petition on finding that:

(i) the violent offender has remained a law-abiding citizen; and

(ii) continued registration is not necessary for public protection and that relief from registration is in the best interests of society.

(3) Except as provided in subsection ~~(5)~~ (7), at any time after 10 years of registration for ~~a violent offender registered as provided in subsection (2)(b) or~~ a level 1 sexual offender and at any time after 25 years of registration for a level 2 sexual offender, an offender may petition the sentencing court or the district court for the judicial district in which the offender resides for an order relieving the offender of the duty to register. The petition must be served on the county attorney in the county where the petition is filed. Prior to a hearing on the petition, the county attorney shall mail a copy of the petition to the victim of the last offense for which the offender was convicted if the victim's address is reasonably available. The court shall consider any written or oral statements of the victim. The court may grant the petition ~~upon~~ on finding that:

(a) the offender has ~~remained a law-abiding citizen~~ maintained a clean record during their period of registration; and

(b) continued registration is not necessary for public protection and that relief from registration is in the best interests of society.

(4) A level 3 sexual offender may have their period of registration reduced to 25 years if the sexual offender was adjudicated delinquent of an offense as a juvenile that required level 3 sexual offender registration

and the sexual offender has maintained a clean record for 25 consecutive years.

(5) For the purposes of this section, the sexual offender has a clean record if, during the period of time in which the sexual offender was required to register as a sexual offender:

(a) the sexual offender was not convicted of any felony offense;

(b) the sexual offender was not convicted of any sexual offense;

(c) the sexual offender successfully completed, without revocation, any period of supervised release, probation, or parole; and

(d) the sexual offender has successfully completed an appropriate sexual offender treatment program.

~~(4)~~(6) The offender may move that all or part of the proceedings in a hearing under ~~subsection~~ subsections (2)(e) and (3) be closed to the public, or the judge may close them on the judge's own motion. If a proceeding under ~~subsection~~ subsections (2)(e) and (3) is closed to the public, the judge shall permit a victim of the offense to be present unless the judge determines that exclusion of the victim is necessary to protect the offender's right of privacy or the safety of the victim. If the victim is present, the judge, at the victim's request, shall permit the presence of an individual to provide support to the victim unless the judge determines that exclusion of the individual is necessary to protect the offender's right to privacy.

~~(5)~~(7) Subsection (3) does not apply to an offender who was convicted of:

(a) a violation of 45-5-503 if:

(i) the victim was compelled to submit by force, as defined in 45-5-501, against the victim or another; or

(ii) at the time the offense occurred, the victim was under 12 years of age;

(b) a violation of 45-5-507 if at the time the offense occurred the victim was under 12 years of age and the offender was 3 or more years older than the victim;

(c) a second or subsequent sexual or violent offense that requires registration; or

(d) a sexual offense and was designated as a sexually violent predator under 46-23-509."

Section 5. Section 46-23-508, MCA, is amended to read:

"**46-23-508. Dissemination of information.** (1) Information maintained under this part is confidential criminal justice information, as defined in 44-5-103, except that:

(a) the name and address of a registered sexual or violent offender are public criminal justice information, as defined in 44-5-103; and

(b) the department of justice or the registration agency shall release any offender registration information that it possesses relevant to the public if the department of justice or the registration agency determines that a registered offender is a risk to the safety of the community and that disclosure of the registration information that it possesses may protect the public and, at a minimum:

(i) if the offender is also a violent offender, the department of justice shall and the registration agency may disseminate to the victim and the public:

(A) the offender's name; and

(B) the offenses for which the offender is required to register under this part;

(ii) if ~~an~~ a sexual offender was given a level 1 designation under 46-23-509, the department of justice shall and the registration agency may disseminate to the victim and the public:

(A) the offender's address;

(B) the name, photograph, and physical description of the offender;

(C) the offender's date of birth; ~~and~~

(D) the offenses for which the offender is required to register under this part;

(E) the offender's employer address; and

(F) the offender's post-secondary school address.

(iii) if ~~an~~ a sexual offender was given a level 1 designation and committed an offense against a minor or was given a level 2 designation under 46-23-509, the department of justice shall and the registration agency may disseminate to the victim and the public:

(A) the offender's address;

(B) the type of victim targeted by the offense;

(C) the name, photograph, and physical description of the offender;

(D) the offender's date of birth;

(E) the license plate number and a description of any motor vehicle owned or operated by the offender;

(F) the offenses for which the offender is required to register under this part; ~~and~~

(G) the offender's employer address;

(H) the offender's post-secondary school address; and

~~(G)~~(I) any conditions imposed by the court upon the offender for the safety of the public; and

(iv) if ~~an~~ a sexual offender was given a level 3 designation under 46-23-509, the department of justice and the registration agency shall give the victim and the public notification that includes the information contained in subsection (1)(b)(iii). The notification must also include the date of the offender's release from confinement or, if not confined, the date the offender was sentenced, with a notation that the offender was not confined, and must include the community in which the offense occurred.

(c) prior to release of information under subsection (1)(b), a registration agency may, in its sole discretion, request an in camera review by a district court of the determination by the registration agency under subsection (1)(b). The court shall review a request under this subsection (1)(c) and shall, as soon as possible, render its opinion so that release of the information is not delayed beyond release of the offender from confinement.

(2) The identity of a victim of an offense for which registration is required under this part may not be released by a registration agency without the permission of the victim.

(3) Dissemination to the public of information allowed or required by this section may be done by newspaper, paper flyers, the internet, or any other media determined by the disseminating entity. In determining the method of dissemination, the disseminating entity should consider the level of risk posed by the offender to the public.

(4) The department of justice shall develop a model community notification policy to assist registration agencies in implementing the dissemination provisions of this section."

Section 6. Section 46-23-509, MCA, is amended to read:

"**46-23-509. Psychosexual evaluations and sexual offender designations.** (1) Prior to sentencing

of a person convicted of a sexual offense, a sexual offender evaluator who has a license endorsement as provided for in 37-1-139 shall provide the court with a psychosexual evaluation report recommending one of the following levels of designation for the offender:

(a) level 1, the risk of a repeat sexual offense is low;

(b) level 2, the risk of a repeat sexual offense is moderate;

(c) level 3, the risk of a repeat sexual offense is high, there is a threat to public safety, and the sexual offender evaluator believes that the offender is a sexually violent predator.

(2) Upon sentencing the offender, the court shall:

(a) review the psychosexual evaluation report, any statement by a victim, and any statement by the offender;

(b) designate the offender as level 1, 2, or 3; and

(c) designate a level 3 offender as a sexually violent predator.

(3) An offender designated as a level 2 offender or given a level designation by another state, the federal government, or the department under subsection (5) that is determined by the court to be similar to level 2 may petition the sentencing court or the district court for the judicial district in which the offender resides to change the offender's designation if the offender has enrolled in and successfully completed the treatment phase of either the prison's sexual offender treatment program or of an equivalent program approved by the department. After considering the petition, the court may change the offender's risk level designation if the court finds by clear and convincing evidence that the offender's risk of committing a repeat sexual offense has changed since the time sentence was imposed. The court shall impose one of the three risk levels specified in this section.

(4) If, at the time of sentencing, the sentencing judge did not apply a level designation to a sexual offender who is required to register under this part and who was sentenced prior to October 1, 1997, the department shall designate the offender as level 1, 2, or 3 when the offender is released from confinement.

(5) If an offense is covered by ~~46-23-502(9)(b)~~ 46-23-502(10)(q), the offender registers under 46-23-504(1)(c), and the offender was given a risk level designation after conviction by another state or the federal government, the department of justice may give the offender the risk level designation assigned by the other

state or the federal government. All offenders convicted in another state or by the federal government who are not currently under the supervision of the department or the youth court and were not given a risk level designation after conviction shall provide to the department of justice all prior risk assessments and psychosexual evaluations done to evaluate the offender's risk to reoffend. Any offender without a risk assessment or psychosexual evaluation shall, at the offender's expense, undergo a psychosexual evaluation with a sexual offender evaluator who has a license endorsement as provided for in 37-1-139. The results of the psychosexual evaluation may be requested by the attorney general or a county attorney for purposes of petitioning a district court to assign a risk level designation.

(6) The lack of a fixed residence is a factor that may be considered by the sentencing court or by the department in determining the risk level to be assigned to an offender pursuant to this section.

(7) Upon obtaining information that indicates that a sexual offender who is required to register under this part does not have a level 1, 2, or 3 designation, the offender, the attorney general, the county attorney that prosecuted the offender and obtained a conviction for a sexual offense, or the county attorney for the county in which the offender resides may, at any time, petition the district court that sentenced the offender for a sexual offense or the district court for the judicial district in which the offender resides to designate the offender as level 1, 2, or 3. Upon the filing of the petition, the court may order a psychosexual evaluation report at the petitioner's expense, or order that the results of all prior psychosexual evaluations be provided to all parties. The court shall provide the offender with an opportunity for a hearing prior to designating the offender. The petitioner shall provide the offender, the attorney general, and the county attorney that prosecuted the offender with notice of the petition and notice of the hearing. As provided in 46-23-506(2)(d), petitions for relief from registration under this part must be filed in the appropriate Montana district court. Orders or other documents granting relief from registration requirements that originated in other jurisdictions are not valid in Montana."

COORDINATION SECTION. **SECTION 7. COORDINATION INSTRUCTION.** IF BOTH HOUSE BILL NO. 112 AND [THIS ACT] ARE PASSED AND APPROVED AND BOTH CONTAIN A SECTION THAT AMENDS 46-23-502, THEN THE SECTIONS THAT AMEND 46-23-502 ARE VOID AND 46-23-502 MUST BE AMENDED AS FOLLOWS:

"**46-23-502. Definitions.** As used in Title 45, chapter 5, part 3 and parts 5 through 7, 46-18-255, and this part, the following definitions apply:

(1) "Department" means the department of corrections provided for in 2-15-2301.

(2) "Foreign offenses" means a conviction for a sexual offense involving any of the conduct listed in this section that was obtained under the laws of Canada, the United Kingdom, Australia, or New Zealand, or under the laws of any foreign country when the United States department of state, in its country reports on human rights practices, has concluded that an independent judiciary generally or vigorously enforced the right to a fair trial in that country during the year in which the conviction was obtained.

~~(2)~~(3) "Mental abnormality" means a congenital or acquired condition that affects the mental, emotional, or volitional capacity of a person in a manner that predisposes the person to the commission of one or more sexual offenses to a degree that makes the person a menace to the health and safety of other persons.

~~(3)~~(4) "Municipality" means an entity that has incorporated as a city or town.

~~(4)~~(5) "Personality disorder" means a personality disorder as defined in the fourth edition of the Diagnostic and Statistical Manual of Mental Disorders adopted by the American psychiatric association.

~~(5)~~(6) "Predatory sexual offense" means a sexual offense committed against a stranger or against a person with whom a relationship has been established or furthered for the primary purpose of victimization.

~~(6)~~(7) "Registration agency" means:

(a) if the offender resides in a municipality, the police department of that municipality; or

(b) if the offender resides in a place other than a municipality, the sheriff's office of the county in which the offender resides.

~~(7)~~(8) (a) "Residence" means the location at which a person regularly resides, regardless of the number of days or nights spent at that location, that can be located by a street address, including a house, apartment building, motel, hotel, or recreational or other vehicle.

(b) The term does not mean a homeless shelter.

~~(8)~~(9) "Sexual offender evaluator" means a person qualified under rules established by the department to conduct psychosexual evaluations of sexual offenders and sexually violent predators.

~~(9)~~(10) (a) "Sexual offense" means~~:~~ any violation, attempt, solicitation, or conspiracy to commit a

violation, or flight after the attempt or commission of the following:

~~(a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-301 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-302 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-303 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-502 (if the offender is a professional licensed under Title 37 and commits the offense during any treatment, consultation, interview, or evaluation of a person's physical or mental condition, ailment, disease, or injury), 45-5-502 (3) (if the victim is less than 16 years of age and the offender is 3 or more years older than the victim), 45-5-503 (1), (3), or (4), 45-5-504 (2)(c), 45-5-504 (3) (if the victim is less than 16 years of age and the offender is 4 or more years older than the victim), 45-5-507 (if the victim is less than 18 years of age and the offender is 3 or more years older than the victim or if the victim is 12 years of age or younger and the offender is 18 years of age or older at the time of the offense), 45-5-508, 45-5-601 (3), 45-5-602 (3), 45-5-603 (1)(b), (2)(b), or (2)(c), 45-5-625, 45-5-704, or 45-5-705 ; or~~

(i) 45-5-301, Unlawful restraint, if the victim is less than 18 years of age and the offender is not a parent of the victim;

(ii) 45-5-302, Kidnapping, if the victim is less than 18 years of age and the offender is not a parent of the victim;

(iii) 45-5-303, Aggravated kidnapping, if the victim is less than 18 years of age and the offender is not a parent of the victim;

(iv) 45-5-502~~(1),~~ (2)(c)~~,~~ and (3), Sexual assault;

(v) 45-5-503, Sexual intercourse without consent;

(vi) 45-5-504(2)(c) and (3), Indecent exposure;

(vii) 45-5-507, Incest, if the victim is less than 18 years of age and the offender is 3 or more years older than the victim, or if the victim is 12 years of age or younger and the offender is 18 years of age or older at the time of the offense;

(viii) 45-5-508, Aggravated sexual intercourse without consent;

(ix) 45-5-601(2)(b) and (3), Prostitution;

(x) 45-5-622(2)(b)(ii), Endangering the welfare of children;

(xi) 45-5-625, Sexual abuse of children;

(xii) 45-5-627(1)(a), Ritual abuse of a minor;

(xiii) 45-5-705, Patronizing a victim of sex trafficking;

(xiv) 45-5-706, Aggravated sex trafficking;

(xv) [section 19 of House Bill No. 112], Child sex trafficking; or

~~(b)~~(xvi) any violation of a law of another state, a tribal government, ~~or~~ the federal government, or the military or a foreign entity that is reasonably equivalent to a violation listed in subsection ~~(9)(a)~~ (10)(a)(i) through (10)(a)(xv) or for which the offender was required to register as a sexual offender after an adjudication or conviction.

(b) The term does not include the exceptions provided for in 45-5-501, 45-5-502, and 45-5-503.

~~(10)~~(11) "Sexual or violent offender" means a person who has been convicted of or, in youth court, found to have committed or been adjudicated for a sexual or violent offense.

~~(11)~~(12) "Sexually violent predator" means a person who:

(a) has been convicted of or, in youth court, found to have committed or been adjudicated for a sexual offense and who suffers from a mental abnormality or a personality disorder that makes the person likely to engage in predatory sexual offenses; or

(b) has been convicted of a sexual offense against a victim 12 years of age or younger and the offender is 18 years of age or older.

~~(12)~~(13) "Transient" means an offender who has no residence.

~~(13)~~(14) "Violent offense" means:

(a) any violation of or attempt, solicitation, or conspiracy to commit a violation of;

(i) 45-5-102, Deliberate homicide;

(ii) 45-5-103, Mitigated deliberate homicide;

(iii) 45-5-202, Aggravated assault;

(iv) 45-5-206 (third or subsequent offense), Partner or family member assault;

(v) 45-5-210(1)(b), (1)(c), or (1)(d), Assault on a peace officer or judicial officer;

(vi) 45-5-212, Assault on a minor;

(vii) 45-5-213, Assault with a weapon;

(viii) 45-5-215, Strangulation of a partner or family member;

(ix) 45-5-302 (if the victim is not a minor), Kidnapping;

(x) 45-5-303 (if the victim is not a minor), Aggravated kidnapping;

(xi) 45-5-401, Robbery;

(xii) 45-6-103, Arson; or

(xiii) 45-9-132; Operation of unlawful clandestine laboratory; or

(b) any violation of a law of another state, a tribal government, ~~or~~ the federal government, or the military or a foreign entity reasonably equivalent to a violation listed in subsection ~~(13)(a)~~ (14)(a)."

COORDINATION SECTION. **SECTION 8. COORDINATION INSTRUCTION.** (1) IF HOUSE BILL NO. 112, HOUSE BILL NO. 525, AND [THIS ACT] ARE PASSED AND APPROVED AND ALL THREE CONTAIN A SECTION THAT AMENDS 46-23-502, THEN THE SECTION IN HOUSE BILL NO. 525 THAT AMENDS 46-23-502 IS VOID AND [SECTION 7 OF THIS ACT], AMENDING 46-23-502, MUST BE FURTHER AMENDED SO THAT 46-23-502(10)(A)(IV) READS:

"(IV) 45-5-502~~(1),~~ (2)(C), (3), AND (4), SEXUAL ASSAULT;".

(2) IF HOUSE BILL NO. 112 IS NOT PASSED AND APPROVED AND HOUSE BILL NO. 525 AND [THIS ACT] ARE PASSED AND APPROVED, THEN THE SECTION IN HOUSE BILL NO. 525 THAT AMENDS 46-23-502 IS VOID AND [SECTION 1 OF THIS ACT], AMENDING 46-23-502, MUST BE FURTHER AMENDED SO THAT 46-23-502(10)(A)(IV) READS:

"(IV) 45-5-502(1), (2)(C), (3), AND (4), SEXUAL ASSAULT;".

COORDINATION SECTION. **SECTION 9. COORDINATION INSTRUCTION.** (1) IF HOUSE BILL NO. 112, SENATE BILL NO. 345, AND [THIS ACT] ARE PASSED AND APPROVED AND ALL THREE CONTAIN A SECTION THAT AMENDS 46-23-502, THEN THE SECTION IN SENATE BILL NO. 345 THAT AMENDS 46-23-502 IS VOID AND [SECTION 7 OF THIS ACT], AMENDING 46-23-502, MUST BE FURTHER AMENDED SO THAT THE DEFINITION OF "SEXUAL OFFENSE" IN 46-23-502(10)(A) INCLUDES THE FOLLOWING OFFENSE:

45-8-218, DEVIATE SEXUAL CONDUCT.

(2) IF HOUSE BILL NO. 112 IS NOT PASSED AND APPROVED AND SENATE BILL NO. 345 AND [THIS ACT] ARE

PASSED AND APPROVED, THEN THE SECTION IN SENATE BILL NO. 345 THAT AMENDS 46-23-502 IS VOID AND [SECTION 1 OF THIS ACT], AMENDING 46-23-502, MUST BE FURTHER AMENDED SO THAT THE DEFINITION OF "SEXUAL OFFENSE" IN 46-23-502(10)(A) INCLUDES THE FOLLOWING OFFENSE:

45-8-218, DEVIATE SEXUAL CONDUCT.

- END -

AMEND

SENATE BILL NO. 38

INTRODUCED BY B. BROWN

BY REQUEST OF THE DEPARTMENT OF JUSTICE

A BILL FOR AN ACT ENTITLED: “AN ACT GENERALLY REVISING STATUTES RELATED TO LEVEL DESIGNATIONS FOR SEXUAL OFFENDERS; PROVIDING DEFINITIONS; REQUIRING ADDITIONAL INFORMATION FROM OFFENDERS REGARDING ELECTRONIC AND COMMUNICATIONS DATA AND PROFESSIONAL LICENSES; REQUIRING NOTICE WHEN AN OFFENDER IS LEAVING THE STATE; PROVIDING OPPORTUNITIES FOR CERTAIN OFFENDERS TO BE REMOVED FROM THE REGISTRY; PROVIDING NOTICE REQUIREMENTS FOR PSYCHOSEXUAL EVALUATIONS; AND AMENDING SECTIONS 46-23-502, 46-23-504, 46-23-505, 46-23-506, 46-23-508, AND 46-23-509, MCA.”

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 46-23-502, MCA, is amended to read:

"**46-23-502. Definitions.** As used in Title 45, chapter 5, part 3 and parts 5 through 7, 46-18-255, and this part, the following definitions apply:

(1) "Department" means the department of corrections provided for in 2-15-2301.

(2) "Foreign offenses" means a conviction for a sexual offense involving any of the conduct listed in this section that was obtained under the laws of Canada, the United Kingdom, Australia, or New Zealand, or under the laws of any foreign country when the United States department of state, in its country reports on human rights practices, has concluded that an independent judiciary generally or vigorously enforced the right to a fair trial in that country during the year in which the conviction occurred.

~~(2)~~(3) "Mental abnormality" means a congenital or acquired condition that affects the mental, emotional, or volitional capacity of a person in a manner that predisposes the person to the commission of one or more sexual offenses to a degree that makes the person a menace to the health and safety of other persons.

~~(3)~~(4) "Municipality" means an entity that has incorporated as a city or town.

~~(4)~~(5) "Personality disorder" means a personality disorder as defined in the fourth edition of the

Diagnostic and Statistical Manual of Mental Disorders adopted by the American psychiatric association.

~~(5)~~(6) "Predatory sexual offense" means a sexual offense committed against a stranger or against a person with whom a relationship has been established or furthered for the primary purpose of victimization.

~~(6)~~(7) "Registration agency" means:

(a) if the offender resides in a municipality, the police department of that municipality; or

(b) if the offender resides in a place other than a municipality, the sheriff's office of the county in which the offender resides.

~~(7)~~(8) (a) "Residence" means the location at which a person regularly resides, regardless of the number of days or nights spent at that location, that can be located by a street address, including a house, apartment building, motel, hotel, or recreational or other vehicle.

(b) The term does not mean a homeless shelter.

~~(8)~~(9) "Sexual offender evaluator" means a person qualified under rules established by the department to conduct psychosexual evaluations of sexual offenders and sexually violent predators.

~~(9)~~(10) (a) "Sexual offense" means~~:~~ any violation, attempt, solicitation, or conspiracy to commit a violation, or flight after the attempt or commission of the following:

~~(a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-301 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-302 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-303 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-502 (if the offender is a professional licensed under Title 37 and commits the offense during any treatment, consultation, interview, or evaluation of a person's physical or mental condition, ailment, disease, or injury), 45-5-502 (3) (if the victim is less than 16 years of age and the offender is 3 or more years older than the victim), 45-5-503 (1), (3), or (4), 45-5-504 (2)(c), 45-5-504 (3) (if the victim is less than 16 years of age and the offender is 4 or more years older than the victim), 45-5-507 (if the victim is less than 18 years of age and the offender is 3 or more years older than the victim or if the victim is 12 years of age or younger and the offender is 18 years of age or older at the time of the offense), 45-5-508, 45-5-601 (3), 45-5-602 (3), 45-5-603 (1)(b), (2)(b), or (2)(c), 45-5-625, 45-5-704, or 45-5-705 ; or~~

(i) 45-5-301, Unlawful restraint, if the victim is less than 18 years of age and the offender is not a parent of the victim;

(ii) 45-5-302, Kidnapping, if the victim is less than 18 years of age and the offender is not a parent of the victim;

(iii) 45-5-303, Aggravated kidnapping, if the victim is less than 18 years of age and the offender is not a parent of the victim;

(iv) 45-5-502(1), (2)(c), (3), (4), and (5), Sexual assault;

(v) 45-5-503, Sexual intercourse without consent;

(vi) 45-5-504(2)(c) and (3), Indecent exposure;

(vii) 45-5-507, Incest, if the victim is less than 18 years of age and the offender is 3 or more years older than the victim, or if the victim is 12 years of age or younger and the offender is 18 years of age or older at the time of the offense;

(viii) 45-5-508, Aggravated sexual intercourse without consent;

(ix) 45-5-601(2)(b), (3), and (4) Prostitution;

(x) 45-5-602(3) and (4), Promoting prostitution;

(xi) 45-5-603, Aggravated promotion of prostitution;

(xii) 45-5-622(2)(b)(ii), Endangering welfare of children;

(xiii) 45-5-625, Sexual abuse of children;

(xiv) 45-5-627(1)(a), Ritual abuse of minor;

(xv) 45-5-704, Sexual servitude;

(xvi) 45-5-705, Patronizing victim of sexual servitude; or

~~(b)~~(xvii) any violation of a law of another state, a tribal government, ~~or~~ the federal government, or the military or a foreign entity that is reasonably equivalent to a violation listed in subsection ~~(9)(a)~~ (10)(a)(i) through (10)(a)(xvi) or for which the offender was required to register as a sexual offender after an adjudication or conviction.

(b) This term does not include the exceptions provided for in 45-5-501, 45-5-502, and 45-5-503.

~~(10)~~(11) "Sexual or violent offender" means a person who has been convicted of or, in youth court, found to have committed or been adjudicated for a sexual or violent offense.

~~(11)~~(12) "Sexually violent predator" means a person who:

(a) has been convicted of or, in youth court, found to have committed or been adjudicated for a

sexual offense and who suffers from a mental abnormality or a personality disorder that makes the person likely to engage in predatory sexual offenses; or

(b) has been convicted of a sexual offense against a victim 12 years of age or younger and the offender is 18 years of age or older.

~~(12)~~(13) "Transient" means an offender who has no residence.

~~(13)~~(14) "Violent offense" means:

(a) any violation of or attempt, solicitation, or conspiracy to commit a violation of:

(i) 45-5-102, Deliberate homicide;

(ii) 45-5-103, Mitigated deliberate homicide;

(iii) 45-5-202, Aggravated assault;

(iv) 45-5-206 (third or subsequent offense), Partner or family member assault;

(v) 45-5-210(1)(b), (1)(c), or (1)(d), Assault on a peace officer or judicial officer;

(vi) 45-5-212, Assault on a minor;

(vii) 45-5-213, Assault with weapon;

(viii) 45-5-215, Strangulation of partner or family member;

(ix) 45-5-302 (if the victim is not a minor), Kidnapping ;

(x) 45-5-303 (if the victim is not a minor), Aggravated kidnapping;

(xi) 45-5-401, Robbery;

(xii) 45-6-103, Arson; or

(xiii) 45-9-132, Operation of unlawful clandestine laboratory; or

(b) any violation of a law of another state, a tribal government, ~~or~~ the federal government, or the military or a foreign entity reasonably equivalent to a violation listed in subsection ~~(13)(a)~~ (14)(a)."

Section 2. Section 46-23-504, MCA, is amended to read:

"**46-23-504. Persons required to register -- procedure.** (1) Except as provided in 41-5-1513 and 45-5-503(5), a sexual or violent offender:

(a) shall register immediately upon conclusion of the sentencing hearing if the offender is not sentenced to confinement or is not sentenced to the department and placed in confinement by the department;

(b) must be registered as provided in 46-23-503 at least 10 days prior to release from confinement if sentenced to confinement or sentenced to the department and placed in confinement by the department;

(c) shall register within 3 business days of entering a county of this state for the purpose of residing or setting up a temporary residence for 10 days or more or for an aggregate period exceeding 30 days in a calendar year; and

(d) who is a transient shall register within 3 business days of entering a county of this state.

(2) Registration under subsection ~~(1)(a), (1)(c), or (1)(d)~~ (1) must be with the appropriate registration agency. If an offender registers with a police department, the department shall notify the sheriff's office of the county in which the municipality is located of the registration. The probation officer having supervision over an offender required to register under subsection (1)(a) shall verify the offender's registration status with the appropriate registration agency.

(3) At the time of registering, the offender shall sign a statement in writing giving the information required by subsections (3)(a) through ~~(3)(h)~~ (3)(k) and any other information required by the department of justice. The registration agency shall fingerprint the offender, unless the offender's fingerprints are on file with the department of justice, photograph the offender, and obtain a DNA sample from the offender. Within 3 days, the registration agency shall send copies of the statement, fingerprints, and photographs to the department of justice. The registration agency shall send the DNA sample to the department of justice for analysis and entry of the DNA record into the DNA identification index. The registration agency shall require an offender given a level 2 or level 3 designation to appear before the registration agency for a new photograph every year. The information collected from the offender at the time of registration must include:

(a) the name of the offender and any aliases used by the offender;

(b) the offender's social security number;

(c) the residence information required by subsection (4);

(d) the name and address of any business or other place where the offender is or will be an employee;

(e) the name and address of any school where the offender will be a student;

(f) the offender's driver's license number;

(g) the description, registration number or identifier, and license number of ~~any~~ all motor ~~vehicle~~

vehicles owned or operated by the offender; and

(h) ~~all of the offender's e-mail addresses and social media screen names.~~The following information related to the offender's internet activity:

(i) all e-mail addresses used by the offender;

(ii) all instant message addresses and identifiers;

(iii) all other designations or monikers used for self-identification in internet communications or postings; and

(iv) all designations used by the offender for the purpose of routing or self-identification in internet communications, postings, or social media accounts;

(i) any passports held or used by the offender. The department or its designee shall make a photocopy of the passports.

(j) all telephone numbers and any other designations used by the offender for the purposes of routing or self-identification in telephonic communications, including but not limited to:

(i) all cellular telephone numbers;

(ii) all landline telephone numbers; and

(iii) all voice over internet protocol telephone numbers; and

(k) all professional licenses, including the licensing number, licensing agency, and any other identifying information about a professional license issued to the offender that authorizes the offender to engage in an occupation or carry out a trade or business.

(4) (a) If, at the time of registration, the offender regularly resides in more than one county or municipality, the offender shall register with the registration agency of each county or municipality in which the offender resides. If an offender resides in more than one location within the same county or municipality, the registration agency shall require the offender to provide all of the locations where the offender regularly resides and to designate one of them as the offender's primary residence.

(b) Registration of more than one residence pursuant to this section is an exception from the single residence rule provided in 1-1-215.

(5) A transient shall report monthly, in person, to the registration agency with which the transient registered pursuant to subsection (1)(d). The transient shall report on a day specified by the registration agency

and during the normal business hours of that agency. On that day, the transient shall provide the registration agency with the information listed in subsections (3)(a) through ~~(3)(h)~~ (3)(k). The registration agency to which the transient reports may also require the transient to provide the locations where the transient stayed during the previous 30 days and may stay during the next 30 days.

(6) (a) The department of justice shall mail a registration verification form:

(i) each 90 days to an offender designated as a level 3 offender under 46-23-509;

(ii) each 180 days to an offender designated as a level 2 offender under 46-23-509; and

(iii) each year to a violent offender or an offender designated as a level 1 offender under 46-23-509.

(b) If the offender is a transient, the department of justice shall mail the offender's registration verification form to the registration agency with which the offender last registered.

(c) The form must require the offender's notarized signature. Within 10 days after receipt of the form, the offender shall complete the form and return it to the registration agency where the offender last registered or, if the offender was initially registered pursuant to subsection (1)(b), to the registration agency in the county or municipality in which the offender is located. A sexual offender shall return the form to the appropriate registration agency in person, and at the time that the sexual offender returns the registration verification form, the registration agency shall take a photograph of the offender and collect a DNA sample if one has not already been collected. The registration agency shall send the DNA sample to the department of justice for analysis and entry into the DNA identification index.

(7) Within 3 days after receipt of a registration verification form, the registration agency shall provide a copy of the form and most recent photograph to the department of justice.

(8) The offender is responsible, if able to pay, for costs associated with registration. The fees charged for registration may not exceed the actual costs of registration. The department of justice may adopt a rule establishing fees to cover registration costs incurred by the department of justice in maintaining registration and address verification records. The fees must be deposited in the general fund.

(9) The clerk of the district court in the county in which a person is convicted of a sexual or violent offense shall notify the sheriff in that county of the conviction within 10 days after entry of the judgment."

Section 3. Section 46-23-505, MCA, is amended to read:

"**46-23-505. Notice of change of name or residence or student, employment, or transient status -- duty to inform -- forwarding of information.** (1) If an offender required to register under this part has a change of name or residence or a change in student, employment, or transient status, the offender shall within 3 business days of the change appear in person and give notification of the change to the registration agency with whom the offender last registered or, if the offender was initially registered under 46-23-504(1)(b), to the registration agency for the county or municipality from which the offender is moving. The registration agency shall require the offender to appear before the registration agency for a new photograph every year.

(2) If an offender required to register under this part is a transient, the offender shall provide written notification to the registration agency with which the offender last registered or, if the offender initially registered pursuant to 46-23-504(1)(b), shall provide notice within 3 business days to the registration agency in the county or municipality in which the offender resides.

(3) Within 3 business days after receipt of the information concerning the new name or residence or a change in the student, employment, or transient status, the registration agency shall forward the information to the department of justice, which shall forward a copy of the information and photograph to:

(a) in the event of a change in residence, the registration agency for the county to which the offender moves and, if the offender lives in a municipality, the registration agency for that municipality to which the offender moves;

(b) in the event of a change of name or of student, employment, or transient status, the registration agency of the appropriate county or municipality.

(4) If an offender who is required to register under this part is physically absent from the offender's county of residence for more than 10 consecutive days, the offender shall register in the county where the offender is physically located on the 11th day even if the offender claims to maintain a residence, as defined in 46-23-502, in that county. The offender shall register again in the offender's county of residence when the offender returns to that county.

(5) If an offender is required to register under subsection (4), the offender shall register in any subsequent county where the offender is present for more than 24 hours until the offender registers again in the offender's county of residence.

(6) In the event an offender will be absent from this state for more than 7 days, the offender shall provide notice with the information required under this section in person to the registering agency no later than 3 days before their scheduled travel. The registering agency shall forward the information to the department of justice, which shall then notify the provided jurisdiction."

Section 4. Section 46-23-506, MCA, is amended to read:

"**46-23-506. ~~Duration~~ Duty of registration -- duration, frequency, reduction, and relief.** (1) A sexual offender required to register under this part shall register for the remainder of the sexual offender's life, except as provided in subsection (3) or during a period of time during which the sexual offender is in prison.

(2) (a) A violent offender required to register under this part shall register for the 10 years following release from confinement or, if not confined following sentencing, for the 10 years following the conclusion of the sentencing hearing and after registering for 10 years, is automatically relieved of the duty to register unless convicted as provided in subsection (2)(b).

(b) If convicted during the 10-year period provided in subsection (2)(a) of failing to register or keep registration current or of a felony, the violent offender shall register for the remainder of the violent offender's life unless relieved of the duty to register as provided in subsection ~~(3)~~ (2)(e).

(c) When ~~an~~ a violent offender is relieved of the duty to register under subsection (2)(a), the department of justice shall remove the violent offender from the registry.

(d) Petitions for relief from registration under this part must be filed in the appropriate Montana district court. Orders or other documents granting relief from registration requirements that originated in other jurisdictions are not valid in Montana.

(e) Except as provided in subsection (5), at any time after 10 years of registration for a violent offender registered as provided in subsection (2)(b), a violent offender may petition the sentencing court or the district court for the judicial district in which the violent offender resides for an order relieving the violent offender of the duty to register. The petition must be served on the county attorney in the county where the petition is filed. Prior to a hearing on the petition, the county attorney shall mail a copy of the petition to the victim of the last offense for which the violent offender was convicted if the victim's address is reasonably available. The court shall consider any written or oral statements of the victim. The court may grant the petition

on finding that:

(i) the violent offender has remained a law-abiding citizen; and

(ii) continued registration is not necessary for public protection and that relief from registration is in the best interests of society.

(3) Except as provided in subsection ~~(5)~~ (7), at any time after 10 years of registration for ~~a violent offender registered as provided in subsection (2)(b) or~~ a level 1 sexual offender and at any time after 25 years of registration for a level 2 sexual offender, an offender may petition the sentencing court or the district court for the judicial district in which the offender resides for an order relieving the offender of the duty to register. The petition must be served on the county attorney in the county where the petition is filed. Prior to a hearing on the petition, the county attorney shall mail a copy of the petition to the victim of the last offense for which the offender was convicted if the victim's address is reasonably available. The court shall consider any written or oral statements of the victim. The court may grant the petition ~~upon~~ on finding that:

(a) the offender has ~~remained a law-abiding citizen~~ maintained a clean record during their period of registration; and

(b) continued registration is not necessary for public protection and that relief from registration is in the best interests of society.

(4) A level 3 sexual offender may have their period of registration reduced to 25 years if the sexual offender was adjudicated delinquent of an offense as a juvenile that required level 3 sexual offender registration and the sexual offender has maintained a clean record for 25 consecutive years.

(5) For the purposes of this section, the sexual offender has a clean record if, during the period of time in which the sexual offender was required to register as a sexual offender:

(a) the sexual offender was not convicted of any felony offense;

(b) the sexual offender was not convicted of any sexual offense;

(c) the sexual offender successfully completed, without revocation, any period of supervised release, probation, or parole; and

(d) the sexual offender has successfully completed an appropriate sexual offender treatment program.

~~(4)~~(6) The offender may move that all or part of the proceedings in a hearing under ~~subsection~~

subsections (2)(e) and (3) be closed to the public, or the judge may close them on the judge's own motion. If a proceeding under ~~subsection~~ subsections (2)(e) and (3) is closed to the public, the judge shall permit a victim of the offense to be present unless the judge determines that exclusion of the victim is necessary to protect the offender's right of privacy or the safety of the victim. If the victim is present, the judge, at the victim's request, shall permit the presence of an individual to provide support to the victim unless the judge determines that exclusion of the individual is necessary to protect the offender's right to privacy.

~~(5)~~(7) Subsection (3) does not apply to an offender who was convicted of:

(a) a violation of 45-5-503 if:

(i) the victim was compelled to submit by force, as defined in 45-5-501, against the victim or another; or

(ii) at the time the offense occurred, the victim was under 12 years of age;

(b) a violation of 45-5-507 if at the time the offense occurred the victim was under 12 years of age and the offender was 3 or more years older than the victim;

(c) a second or subsequent sexual or violent offense that requires registration; or

(d) a sexual offense and was designated as a sexually violent predator under 46-23-509."

Section 5. Section 46-23-508, MCA, is amended to read:

"**46-23-508. Dissemination of information.** (1) Information maintained under this part is confidential criminal justice information, as defined in 44-5-103, except that:

(a) the name and address of a registered sexual or violent offender are public criminal justice information, as defined in 44-5-103; and

(b) the department of justice or the registration agency shall release any offender registration information that it possesses relevant to the public if the department of justice or the registration agency determines that a registered offender is a risk to the safety of the community and that disclosure of the registration information that it possesses may protect the public and, at a minimum:

(i) if the offender is also a violent offender, the department of justice shall and the registration agency may disseminate to the victim and the public:

(A) the offender's name; and

(B) the offenses for which the offender is required to register under this part;

(ii) if ~~an~~ a sexual offender was given a level 1 designation under 46-23-509, the department of justice shall and the registration agency may disseminate to the victim and the public:

(A) the offender's address;

(B) the name, photograph, and physical description of the offender;

(C) the offender's date of birth; ~~and~~

(D) the offenses for which the offender is required to register under this part;

(E) the offender's employer address; and

(F) the offender's post-secondary school address.

(iii) if ~~an~~ a sexual offender was given a level 1 designation and committed an offense against a minor or was given a level 2 designation under 46-23-509, the department of justice shall and the registration agency may disseminate to the victim and the public:

(A) the offender's address;

(B) the type of victim targeted by the offense;

(C) the name, photograph, and physical description of the offender;

(D) the offender's date of birth;

(E) the license plate number and a description of any motor vehicle owned or operated by the offender;

(F) the offenses for which the offender is required to register under this part; ~~and~~

(G) the offender's employer address;

(H) the offender's post-secondary school address; and

~~(G)~~(I) any conditions imposed by the court upon the offender for the safety of the public; and

(iv) if ~~an~~ a sexual offender was given a level 3 designation under 46-23-509, the department of justice and the registration agency shall give the victim and the public notification that includes the information contained in subsection (1)(b)(iii). The notification must also include the date of the offender's release from confinement or, if not confined, the date the offender was sentenced, with a notation that the offender was not confined, and must include the community in which the offense occurred.

(c) prior to release of information under subsection (1)(b), a registration agency may, in its sole

discretion, request an in camera review by a district court of the determination by the registration agency under subsection (1)(b). The court shall review a request under this subsection (1)(c) and shall, as soon as possible, render its opinion so that release of the information is not delayed beyond release of the offender from confinement.

(2) The identity of a victim of an offense for which registration is required under this part may not be released by a registration agency without the permission of the victim.

(3) Dissemination to the public of information allowed or required by this section may be done by newspaper, paper flyers, the internet, or any other media determined by the disseminating entity. In determining the method of dissemination, the disseminating entity should consider the level of risk posed by the offender to the public.

(4) The department of justice shall develop a model community notification policy to assist registration agencies in implementing the dissemination provisions of this section."

Section 6. Section 46-23-509, MCA, is amended to read:

"**46-23-509. Psychosexual evaluations and sexual offender designations.** (1) Prior to sentencing of a person convicted of a sexual offense, a sexual offender evaluator who has a license endorsement as provided for in 37-1-139 shall provide the court with a psychosexual evaluation report recommending one of the following levels of designation for the offender:

(a) level 1, the risk of a repeat sexual offense is low;

(b) level 2, the risk of a repeat sexual offense is moderate;

(c) level 3, the risk of a repeat sexual offense is high, there is a threat to public safety, and the sexual offender evaluator believes that the offender is a sexually violent predator.

(2) Upon sentencing the offender, the court shall:

(a) review the psychosexual evaluation report, any statement by a victim, and any statement by the offender;

(b) designate the offender as level 1, 2, or 3; and

(c) designate a level 3 offender as a sexually violent predator.

(3) An offender designated as a level 2 offender or given a level designation by another state, the

federal government, or the department under subsection (5) that is determined by the court to be similar to level 2 may petition the sentencing court or the district court for the judicial district in which the offender resides to change the offender's designation if the offender has enrolled in and successfully completed the treatment phase of either the prison's sexual offender treatment program or of an equivalent program approved by the department. After considering the petition, the court may change the offender's risk level designation if the court finds by clear and convincing evidence that the offender's risk of committing a repeat sexual offense has changed since the time sentence was imposed. The court shall impose one of the three risk levels specified in this section.

(4) If, at the time of sentencing, the sentencing judge did not apply a level designation to a sexual offender who is required to register under this part and who was sentenced prior to October 1, 1997, the department shall designate the offender as level 1, 2, or 3 when the offender is released from confinement.

(5) If an offense is covered by ~~46-23-502(9)(b)~~ 46-23-502(10)(q), the offender registers under 46-23-504(1)(c), and the offender was given a risk level designation after conviction by another state or the federal government, the department of justice may give the offender the risk level designation assigned by the other state or the federal government. All offenders convicted in another state or by the federal government who are not currently under the supervision of the department or the youth court and were not given a risk level designation after conviction shall provide to the department of justice all prior risk assessments and psychosexual evaluations done to evaluate the offender's risk to reoffend. Any offender without a risk assessment or psychosexual evaluation shall, at the offender's expense, undergo a psychosexual evaluation with a sexual offender evaluator who has a license endorsement as provided for in 37-1-139. The results of the psychosexual evaluation may be requested by the attorney general or a county attorney for purposes of petitioning a district court to assign a risk level designation.

(6) The lack of a fixed residence is a factor that may be considered by the sentencing court or by the department in determining the risk level to be assigned to an offender pursuant to this section.

(7) Upon obtaining information that indicates that a sexual offender who is required to register under this part does not have a level 1, 2, or 3 designation, the offender, the attorney general, the county attorney that prosecuted the offender and obtained a conviction for a sexual offense, or the county attorney for the county in which the offender resides may, at any time, petition the district court that sentenced the offender

for a sexual offense or the district court for the judicial district in which the offender resides to designate the offender as level 1, 2, or 3. Upon the filing of the petition, the court may order a psychosexual evaluation report at the petitioner's expense, or order that the results of all prior psychosexual evaluations be provided to all parties. The court shall provide the offender with an opportunity for a hearing prior to designating the offender. The petitioner shall provide the offender, the attorney general, and the county attorney that prosecuted the offender with notice of the petition and notice of the hearing. As provided in 46-23-506(2)(d), petitions for relief from registration under this part must be filed in the appropriate Montana district court. Orders or other documents granting relief from registration requirements that originated in other jurisdictions are not valid in Montana."

- END -

SENATE BILL NO. 38

INTRODUCED BY B. BROWN

BY REQUEST OF THE DEPARTMENT OF JUSTICE

A BILL FOR AN ACT ENTITLED: “AN ACT GENERALLY REVISING STATUTES RELATED TO LEVEL DESIGNATIONS FOR SEXUAL OFFENDERS; PROVIDING DEFINITIONS; REQUIRING ADDITIONAL INFORMATION FROM OFFENDERS REGARDING ELECTRONIC AND COMMUNICATIONS DATA AND PROFESSIONAL LICENSES; REQUIRING NOTICE WHEN AN OFFENDER IS LEAVING THE STATE; PROVIDING OPPORTUNITIES FOR CERTAIN OFFENDERS TO BE REMOVED FROM THE REGISTRY; PROVIDING NOTICE REQUIREMENTS FOR PSYCHOSEXUAL EVALUATIONS; AND AMENDING SECTIONS 46-23-502, 46-23-504, 46-23-505, 46-23-506, 46-23-508, AND 46-23-509, MCA.”

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 46-23-502, MCA, is amended to read:

"**46-23-502. Definitions.** As used in Title 45, chapter 5, part 3 and parts 5 through 7, 46-18-255, and this part, the following definitions apply:

(1) "Department" means the department of corrections provided for in 2-15-2301.

(2) "Foreign offenses" means a conviction for a sexual offense involving any of the conduct listed in this section that was obtained under the laws of Canada, the United Kingdom, Australia, or New Zealand, or under the laws of any foreign country when the United States department of state, in its country reports on human rights practices, has concluded that an independent judiciary generally or vigorously enforced the right to a fair trial in that country during the year in which the conviction occurred.

~~(2)~~(3) "Mental abnormality" means a congenital or acquired condition that affects the mental, emotional, or volitional capacity of a person in a manner that predisposes the person to the commission of one or more sexual offenses to a degree that makes the person a menace to the health and safety of other persons.

~~(3)~~(4) "Municipality" means an entity that has incorporated as a city or town.

~~(4)~~(5) "Personality disorder" means a personality disorder as defined in the fourth edition of the

Diagnostic and Statistical Manual of Mental Disorders adopted by the American psychiatric association.

~~(5)~~(6) "Predatory sexual offense" means a sexual offense committed against a stranger or against a person with whom a relationship has been established or furthered for the primary purpose of victimization.

~~(6)~~(7) "Registration agency" means:

(a) if the offender resides in a municipality, the police department of that municipality; or

(b) if the offender resides in a place other than a municipality, the sheriff's office of the county in which the offender resides.

~~(7)~~(8) (a) "Residence" means the location at which a person regularly resides, regardless of the number of days or nights spent at that location, that can be located by a street address, including a house, apartment building, motel, hotel, or recreational or other vehicle.

(b) The term does not mean a homeless shelter.

~~(8)~~(9) "Sexual offender evaluator" means a person qualified under rules established by the department to conduct psychosexual evaluations of sexual offenders and sexually violent predators.

~~(9)~~(10) (a) "Sexual offense" means~~:~~ any violation, attempt, solicitation, or conspiracy to commit a violation, or flight after the attempt or commission of the following:

~~(a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-301 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-302 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-303 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-502 (if the offender is a professional licensed under Title 37 and commits the offense during any treatment, consultation, interview, or evaluation of a person's physical or mental condition, ailment, disease, or injury), 45-5-502 (3) (if the victim is less than 16 years of age and the offender is 3 or more years older than the victim), 45-5-503 (1), (3), or (4), 45-5-504 (2)(c), 45-5-504 (3) (if the victim is less than 16 years of age and the offender is 4 or more years older than the victim), 45-5-507 (if the victim is less than 18 years of age and the offender is 3 or more years older than the victim or if the victim is 12 years of age or younger and the offender is 18 years of age or older at the time of the offense), 45-5-508, 45-5-601 (3), 45-5-602 (3), 45-5-603 (1)(b), (2)(b), or (2)(c), 45-5-625, 45-5-704, or 45-5-705 ; or~~

(i) 45-5-301, Unlawful restraint, if the victim is less than 18 years of age and the offender is not a parent of the victim;

(ii) 45-5-302, Kidnapping, if the victim is less than 18 years of age and the offender is not a parent of the victim;

(iii) 45-5-303, Aggravated kidnapping, if the victim is less than 18 years of age and the offender is not a parent of the victim;

(iv) 45-5-502(1), (2)(c), AND (3), ~~(4), and (5),~~ Sexual assault;

(v) 45-5-503, Sexual intercourse without consent;

(vi) 45-5-504(2)(c) and (3), Indecent exposure;

(vii) 45-5-507, Incest, if the victim is less than 18 years of age and the offender is 3 or more years older than the victim, or if the victim is 12 years of age or younger and the offender is 18 years of age or older at the time of the offense;

(viii) 45-5-508, Aggravated sexual intercourse without consent;

(ix) 45-5-601(2)(b), (3), and (4) Prostitution;

(x) 45-5-602(3) and (4), Promoting prostitution;

(xi) 45-5-603, Aggravated promotion of prostitution;

(xii) 45-5-622(2)(b)(ii), Endangering welfare of children;

(xiii) 45-5-625, Sexual abuse of children;

(xiv) 45-5-627(1)(a), Ritual abuse of minor;

(xv) 45-5-704, Sexual servitude;

(xvi) 45-5-705, Patronizing victim of sexual servitude; or

~~(b)~~(xvii) any violation of a law of another state, a tribal government, ~~or~~ the federal government, or the military or a foreign entity that is reasonably equivalent to a violation listed in subsection ~~(9)(a)~~ (10)(a)(i) through (10)(a)(xvi) or for which the offender was required to register as a sexual offender after an adjudication or conviction.

(b) This term does not include the exceptions provided for in 45-5-501, 45-5-502, and 45-5-503.

~~(10)~~(11) "Sexual or violent offender" means a person who has been convicted of or, in youth court, found to have committed or been adjudicated for a sexual or violent offense.

~~(11)~~(12) "Sexually violent predator" means a person who:

(a) has been convicted of or, in youth court, found to have committed or been adjudicated for a

sexual offense and who suffers from a mental abnormality or a personality disorder that makes the person likely to engage in predatory sexual offenses; or

(b) has been convicted of a sexual offense against a victim 12 years of age or younger and the offender is 18 years of age or older.

~~(12)~~(13) "Transient" means an offender who has no residence.

~~(13)~~(14) "Violent offense" means:

(a) any violation of or attempt, solicitation, or conspiracy to commit a violation of:

(i) 45-5-102, Deliberate homicide;

(ii) 45-5-103, Mitigated deliberate homicide;

(iii) 45-5-202, Aggravated assault;

(iv) 45-5-206 (third or subsequent offense), Partner or family member assault;

(v) 45-5-210(1)(b), (1)(c), or (1)(d), Assault on a peace officer or judicial officer;

(vi) 45-5-212, Assault on a minor;

(vii) 45-5-213, Assault with weapon;

(viii) 45-5-215, Strangulation of partner or family member;

(ix) 45-5-302 (if the victim is not a minor), Kidnapping ;

(x) 45-5-303 (if the victim is not a minor), Aggravated kidnapping;

(xi) 45-5-401, Robbery;

(xii) 45-6-103, Arson; or

(xiii) 45-9-132, Operation of unlawful clandestine laboratory; or

(b) any violation of a law of another state, a tribal government, ~~or~~ the federal government, or the military or a foreign entity reasonably equivalent to a violation listed in subsection ~~(13)(a)~~ (14)(a)."

Section 2. Section 46-23-504, MCA, is amended to read:

"**46-23-504. Persons required to register -- procedure.** (1) Except as provided in 41-5-1513 and 45-5-503(5), a sexual or violent offender:

(a) shall register immediately upon conclusion of the sentencing hearing if the offender is not sentenced to confinement or is not sentenced to the department and placed in confinement by the department;

(b) must be registered as provided in 46-23-503 at least 10 days prior to release from confinement if sentenced to confinement or sentenced to the department and placed in confinement by the department;

(c) shall register within 3 business days of entering a county of this state for the purpose of residing or setting up a temporary residence for 10 days or more or for an aggregate period exceeding 30 days in a calendar year; and

(d) who is a transient shall register within 3 business days of entering a county of this state.

(2) Registration under subsection ~~(1)(a), (1)(c), or (1)(d)~~ (1) must be with the appropriate registration agency. If an offender registers with a police department, the department shall notify the sheriff's office of the county in which the municipality is located of the registration. The probation officer having supervision over an offender required to register under subsection (1)(a) shall verify the offender's registration status with the appropriate registration agency.

(3) At the time of registering, the offender shall sign a statement in writing giving the information required by subsections (3)(a) through ~~(3)(h)~~ (3)(k) and any other information required by the department of justice. The registration agency shall fingerprint the offender, unless the offender's fingerprints are on file with the department of justice, photograph the offender, and obtain a DNA sample from the offender. Within 3 days, the registration agency shall send copies of the statement, fingerprints, and photographs to the department of justice. The registration agency shall send the DNA sample to the department of justice for analysis and entry of the DNA record into the DNA identification index. The registration agency shall require an offender given a level 2 or level 3 designation to appear before the registration agency for a new photograph every year. The information collected from the offender at the time of registration must include:

(a) the name of the offender and any aliases used by the offender;

(b) the offender's social security number;

(c) the residence information required by subsection (4);

(d) the name and address of any business or other place where the offender is or will be an employee;

(e) the name and address of any school where the offender will be a student;

(f) the offender's driver's license number;

(g) the description, registration number or identifier, and license number of ~~any~~ all motor ~~vehicle~~

vehicles owned or operated by the offender; and

(h) ~~all of the offender's e-mail addresses and social media screen names.~~The following information related to the offender's internet activity:

(i) all e-mail addresses used by the offender;

(ii) all instant message addresses and identifiers;

(iii) all other designations or monikers used for self-identification in internet communications or postings; and

(iv) all designations used by the offender for the purpose of routing or self-identification in internet communications, postings, or social media accounts;

(i) any passports held or used by the offender. The department or its designee shall make a photocopy of the passports.

(j) all telephone numbers and any other designations used by the offender for the purposes of routing or self-identification in telephonic communications, including but not limited to:

(i) all cellular telephone numbers;

(ii) all landline telephone numbers; and

(iii) all voice over internet protocol telephone numbers; and

(k) all professional licenses, including the licensing number, licensing agency, and any other identifying information about a professional license issued to the offender that authorizes the offender to engage in an occupation or carry out a trade or business.

(4) (a) If, at the time of registration, the offender regularly resides in more than one county or municipality, the offender shall register with the registration agency of each county or municipality in which the offender resides. If an offender resides in more than one location within the same county or municipality, the registration agency shall require the offender to provide all of the locations where the offender regularly resides and to designate one of them as the offender's primary residence.

(b) Registration of more than one residence pursuant to this section is an exception from the single residence rule provided in 1-1-215.

(5) A transient shall report monthly, in person, to the registration agency with which the transient registered pursuant to subsection (1)(d). The transient shall report on a day specified by the registration agency

and during the normal business hours of that agency. On that day, the transient shall provide the registration agency with the information listed in subsections (3)(a) through ~~(3)(h)~~ (3)(k). The registration agency to which the transient reports may also require the transient to provide the locations where the transient stayed during the previous 30 days and may stay during the next 30 days.

(6) (a) The department of justice shall mail a registration verification form:

(i) each 90 days to an offender designated as a level 3 offender under 46-23-509;

(ii) each 180 days to an offender designated as a level 2 offender under 46-23-509; and

(iii) each year to a violent offender or an offender designated as a level 1 offender under 46-23-509.

(b) If the offender is a transient, the department of justice shall mail the offender's registration verification form to the registration agency with which the offender last registered.

(c) The form must require the offender's notarized signature. Within 10 days after receipt of the form, the offender shall complete the form and return it to the registration agency where the offender last registered or, if the offender was initially registered pursuant to subsection (1)(b), to the registration agency in the county or municipality in which the offender is located. A sexual offender shall return the form to the appropriate registration agency in person, and at the time that the sexual offender returns the registration verification form, the registration agency shall take a photograph of the offender and collect a DNA sample if one has not already been collected. The registration agency shall send the DNA sample to the department of justice for analysis and entry into the DNA identification index.

(7) Within 3 days after receipt of a registration verification form, the registration agency shall provide a copy of the form and most recent photograph to the department of justice.

(8) The offender is responsible, if able to pay, for costs associated with registration. The fees charged for registration may not exceed the actual costs of registration. The department of justice may adopt a rule establishing fees to cover registration costs incurred by the department of justice in maintaining registration and address verification records. The fees must be deposited in the general fund.

(9) The clerk of the district court in the county in which a person is convicted of a sexual or violent offense shall notify the sheriff in that county of the conviction within 10 days after entry of the judgment."

Section 3. Section 46-23-505, MCA, is amended to read:

"**46-23-505. Notice of change of name or residence or student, employment, or transient status -- duty to inform -- forwarding of information.** (1) If an offender required to register under this part has a change of name or residence or a change in student, employment, or transient status, the offender shall within 3 business days of the change appear in person and give notification of the change to the registration agency with whom the offender last registered or, if the offender was initially registered under 46-23-504(1)(b), to the registration agency for the county or municipality from which the offender is moving. The registration agency shall require the offender to appear before the registration agency for a new photograph every year.

(2) If an offender required to register under this part is a transient, the offender shall provide written notification to the registration agency with which the offender last registered or, if the offender initially registered pursuant to 46-23-504(1)(b), shall provide notice within 3 business days to the registration agency in the county or municipality in which the offender resides.

(3) Within 3 business days after receipt of the information concerning the new name or residence or a change in the student, employment, or transient status, the registration agency shall forward the information to the department of justice, which shall forward a copy of the information and photograph to:

(a) in the event of a change in residence, the registration agency for the county to which the offender moves and, if the offender lives in a municipality, the registration agency for that municipality to which the offender moves;

(b) in the event of a change of name or of student, employment, or transient status, the registration agency of the appropriate county or municipality.

(4) If an offender who is required to register under this part is physically absent from the offender's county of residence for more than 10 consecutive days, the offender shall register in the county where the offender is physically located on the 11th day even if the offender claims to maintain a residence, as defined in 46-23-502, in that county. The offender shall register again in the offender's county of residence when the offender returns to that county.

(5) If an offender is required to register under subsection (4), the offender shall register in any subsequent county where the offender is present for more than 24 hours until the offender registers again in the offender's county of residence.

(6) In the event an offender will be absent from this state for more than 7 days, the offender shall provide notice with the information required under this section in person to the registering agency no later than 3 days before their scheduled travel. The registering agency shall forward the information to the department of justice, which shall then notify the provided jurisdiction."

Section 4. Section 46-23-506, MCA, is amended to read:

"**46-23-506. ~~Duration~~ Duty of registration -- duration, frequency, reduction, and relief.** (1) A sexual offender required to register under this part shall register for the remainder of the sexual offender's life, except as provided in subsection (3) or during a period of time during which the sexual offender is in prison.

(2) (a) A violent offender required to register under this part shall register for the 10 years following release from confinement or, if not confined following sentencing, for the 10 years following the conclusion of the sentencing hearing and after registering for 10 years, is automatically relieved of the duty to register unless convicted as provided in subsection (2)(b).

(b) If convicted during the 10-year period provided in subsection (2)(a) of failing to register or keep registration current or of a felony, the violent offender shall register for the remainder of the violent offender's life unless relieved of the duty to register as provided in subsection ~~(3)~~ (2)(e).

(c) When ~~an~~ a violent offender is relieved of the duty to register under subsection (2)(a), the department of justice shall remove the violent offender from the registry.

(d) Petitions for relief from registration under this part must be filed in the appropriate Montana district court. Orders or other documents granting relief from registration requirements that originated in other jurisdictions are not valid in Montana.

(e) Except as provided in subsection (5), at any time after 10 years of registration for a violent offender registered as provided in subsection (2)(b), a violent offender may petition the sentencing court or the district court for the judicial district in which the violent offender resides for an order relieving the violent offender of the duty to register. The petition must be served on the county attorney in the county where the petition is filed. Prior to a hearing on the petition, the county attorney shall mail a copy of the petition to the victim of the last offense for which the violent offender was convicted if the victim's address is reasonably available. The court shall consider any written or oral statements of the victim. The court may grant the petition

on finding that:

(i) the violent offender has remained a law-abiding citizen; and

(ii) continued registration is not necessary for public protection and that relief from registration is in the best interests of society.

(3) Except as provided in subsection ~~(5)~~ (7), at any time after 10 years of registration for ~~a violent offender registered as provided in subsection (2)(b) or~~ a level 1 sexual offender and at any time after 25 years of registration for a level 2 sexual offender, an offender may petition the sentencing court or the district court for the judicial district in which the offender resides for an order relieving the offender of the duty to register. The petition must be served on the county attorney in the county where the petition is filed. Prior to a hearing on the petition, the county attorney shall mail a copy of the petition to the victim of the last offense for which the offender was convicted if the victim's address is reasonably available. The court shall consider any written or oral statements of the victim. The court may grant the petition ~~upon~~ on finding that:

(a) the offender has ~~remained a law-abiding citizen~~ maintained a clean record during their period of registration; and

(b) continued registration is not necessary for public protection and that relief from registration is in the best interests of society.

(4) A level 3 sexual offender may have their period of registration reduced to 25 years if the sexual offender was adjudicated delinquent of an offense as a juvenile that required level 3 sexual offender registration and the sexual offender has maintained a clean record for 25 consecutive years.

(5) For the purposes of this section, the sexual offender has a clean record if, during the period of time in which the sexual offender was required to register as a sexual offender:

(a) the sexual offender was not convicted of any felony offense;

(b) the sexual offender was not convicted of any sexual offense;

(c) the sexual offender successfully completed, without revocation, any period of supervised release, probation, or parole; and

(d) the sexual offender has successfully completed an appropriate sexual offender treatment program.

~~(4)~~(6) The offender may move that all or part of the proceedings in a hearing under ~~subsection~~

subsections (2)(e) and (3) be closed to the public, or the judge may close them on the judge's own motion. If a proceeding under ~~subsection~~ subsections (2)(e) and (3) is closed to the public, the judge shall permit a victim of the offense to be present unless the judge determines that exclusion of the victim is necessary to protect the offender's right of privacy or the safety of the victim. If the victim is present, the judge, at the victim's request, shall permit the presence of an individual to provide support to the victim unless the judge determines that exclusion of the individual is necessary to protect the offender's right to privacy.

~~(5)~~(7) Subsection (3) does not apply to an offender who was convicted of:

(a) a violation of 45-5-503 if:

(i) the victim was compelled to submit by force, as defined in 45-5-501, against the victim or another; or

(ii) at the time the offense occurred, the victim was under 12 years of age;

(b) a violation of 45-5-507 if at the time the offense occurred the victim was under 12 years of age and the offender was 3 or more years older than the victim;

(c) a second or subsequent sexual or violent offense that requires registration; or

(d) a sexual offense and was designated as a sexually violent predator under 46-23-509."

Section 5. Section 46-23-508, MCA, is amended to read:

"**46-23-508. Dissemination of information.** (1) Information maintained under this part is confidential criminal justice information, as defined in 44-5-103, except that:

(a) the name and address of a registered sexual or violent offender are public criminal justice information, as defined in 44-5-103; and

(b) the department of justice or the registration agency shall release any offender registration information that it possesses relevant to the public if the department of justice or the registration agency determines that a registered offender is a risk to the safety of the community and that disclosure of the registration information that it possesses may protect the public and, at a minimum:

(i) if the offender is also a violent offender, the department of justice shall and the registration agency may disseminate to the victim and the public:

(A) the offender's name; and

(B) the offenses for which the offender is required to register under this part;

(ii) if ~~an~~ a sexual offender was given a level 1 designation under 46-23-509, the department of justice shall and the registration agency may disseminate to the victim and the public:

(A) the offender's address;

(B) the name, photograph, and physical description of the offender;

(C) the offender's date of birth; ~~and~~

(D) the offenses for which the offender is required to register under this part;

(E) the offender's employer address; and

(F) the offender's post-secondary school address.

(iii) if ~~an~~ a sexual offender was given a level 1 designation and committed an offense against a minor or was given a level 2 designation under 46-23-509, the department of justice shall and the registration agency may disseminate to the victim and the public:

(A) the offender's address;

(B) the type of victim targeted by the offense;

(C) the name, photograph, and physical description of the offender;

(D) the offender's date of birth;

(E) the license plate number and a description of any motor vehicle owned or operated by the offender;

(F) the offenses for which the offender is required to register under this part; ~~and~~

(G) the offender's employer address;

(H) the offender's post-secondary school address; and

~~(G)~~(I) any conditions imposed by the court upon the offender for the safety of the public; and

(iv) if ~~an~~ a sexual offender was given a level 3 designation under 46-23-509, the department of justice and the registration agency shall give the victim and the public notification that includes the information contained in subsection (1)(b)(iii). The notification must also include the date of the offender's release from confinement or, if not confined, the date the offender was sentenced, with a notation that the offender was not confined, and must include the community in which the offense occurred.

(c) prior to release of information under subsection (1)(b), a registration agency may, in its sole

discretion, request an in camera review by a district court of the determination by the registration agency under subsection (1)(b). The court shall review a request under this subsection (1)(c) and shall, as soon as possible, render its opinion so that release of the information is not delayed beyond release of the offender from confinement.

(2) The identity of a victim of an offense for which registration is required under this part may not be released by a registration agency without the permission of the victim.

(3) Dissemination to the public of information allowed or required by this section may be done by newspaper, paper flyers, the internet, or any other media determined by the disseminating entity. In determining the method of dissemination, the disseminating entity should consider the level of risk posed by the offender to the public.

(4) The department of justice shall develop a model community notification policy to assist registration agencies in implementing the dissemination provisions of this section."

Section 6. Section 46-23-509, MCA, is amended to read:

"**46-23-509. Psychosexual evaluations and sexual offender designations.** (1) Prior to sentencing of a person convicted of a sexual offense, a sexual offender evaluator who has a license endorsement as provided for in 37-1-139 shall provide the court with a psychosexual evaluation report recommending one of the following levels of designation for the offender:

(a) level 1, the risk of a repeat sexual offense is low;

(b) level 2, the risk of a repeat sexual offense is moderate;

(c) level 3, the risk of a repeat sexual offense is high, there is a threat to public safety, and the sexual offender evaluator believes that the offender is a sexually violent predator.

(2) Upon sentencing the offender, the court shall:

(a) review the psychosexual evaluation report, any statement by a victim, and any statement by the offender;

(b) designate the offender as level 1, 2, or 3; and

(c) designate a level 3 offender as a sexually violent predator.

(3) An offender designated as a level 2 offender or given a level designation by another state, the

federal government, or the department under subsection (5) that is determined by the court to be similar to level 2 may petition the sentencing court or the district court for the judicial district in which the offender resides to change the offender's designation if the offender has enrolled in and successfully completed the treatment phase of either the prison's sexual offender treatment program or of an equivalent program approved by the department. After considering the petition, the court may change the offender's risk level designation if the court finds by clear and convincing evidence that the offender's risk of committing a repeat sexual offense has changed since the time sentence was imposed. The court shall impose one of the three risk levels specified in this section.

(4) If, at the time of sentencing, the sentencing judge did not apply a level designation to a sexual offender who is required to register under this part and who was sentenced prior to October 1, 1997, the department shall designate the offender as level 1, 2, or 3 when the offender is released from confinement.

(5) If an offense is covered by ~~46-23-502(9)(b)~~ 46-23-502(10)(q), the offender registers under 46-23-504(1)(c), and the offender was given a risk level designation after conviction by another state or the federal government, the department of justice may give the offender the risk level designation assigned by the other state or the federal government. All offenders convicted in another state or by the federal government who are not currently under the supervision of the department or the youth court and were not given a risk level designation after conviction shall provide to the department of justice all prior risk assessments and psychosexual evaluations done to evaluate the offender's risk to reoffend. Any offender without a risk assessment or psychosexual evaluation shall, at the offender's expense, undergo a psychosexual evaluation with a sexual offender evaluator who has a license endorsement as provided for in 37-1-139. The results of the psychosexual evaluation may be requested by the attorney general or a county attorney for purposes of petitioning a district court to assign a risk level designation.

(6) The lack of a fixed residence is a factor that may be considered by the sentencing court or by the department in determining the risk level to be assigned to an offender pursuant to this section.

(7) Upon obtaining information that indicates that a sexual offender who is required to register under this part does not have a level 1, 2, or 3 designation, the offender, the attorney general, the county attorney that prosecuted the offender and obtained a conviction for a sexual offense, or the county attorney for the county in which the offender resides may, at any time, petition the district court that sentenced the offender

for a sexual offense or the district court for the judicial district in which the offender resides to designate the offender as level 1, 2, or 3. Upon the filing of the petition, the court may order a psychosexual evaluation report at the petitioner's expense, or order that the results of all prior psychosexual evaluations be provided to all parties. The court shall provide the offender with an opportunity for a hearing prior to designating the offender. The petitioner shall provide the offender, the attorney general, and the county attorney that prosecuted the offender with notice of the petition and notice of the hearing. As provided in 46-23-506(2)(d), petitions for relief from registration under this part must be filed in the appropriate Montana district court. Orders or other documents granting relief from registration requirements that originated in other jurisdictions are not valid in Montana."

COORDINATION SECTION. **SECTION 7. COORDINATION INSTRUCTION.** IF BOTH HOUSE BILL NO. 112 AND [THIS ACT] ARE PASSED AND APPROVED AND BOTH CONTAIN A SECTION THAT AMENDS 46-23-502, THEN THE SECTIONS THAT AMEND 46-23-502 ARE VOID AND 46-23-502 MUST BE AMENDED AS FOLLOWS:

"**46-23-502. Definitions.** As used in Title 45, chapter 5, part 3 and parts 5 through 7, 46-18-255, and this part, the following definitions apply:

(1) "Department" means the department of corrections provided for in 2-15-2301.

(2) "Foreign offenses" means a conviction for a sexual offense involving any of the conduct listed in this section that was obtained under the laws of Canada, the United Kingdom, Australia, or New Zealand, or under the laws of any foreign country when the United States department of state, in its country reports on human rights practices, has concluded that an independent judiciary generally or vigorously enforced the right to a fair trial in that country during the year in which the conviction was obtained.

~~(2)~~(3) "Mental abnormality" means a congenital or acquired condition that affects the mental, emotional, or volitional capacity of a person in a manner that predisposes the person to the commission of one or more sexual offenses to a degree that makes the person a menace to the health and safety of other persons.

~~(3)~~(4) "Municipality" means an entity that has incorporated as a city or town.

~~(4)~~(5) "Personality disorder" means a personality disorder as defined in the fourth edition of the Diagnostic and Statistical Manual of Mental Disorders adopted by the American psychiatric association.

~~(5)~~(6) "Predatory sexual offense" means a sexual offense committed against a stranger or against a

person with whom a relationship has been established or furthered for the primary purpose of victimization.

~~(6)~~(7) "Registration agency" means:

(a) if the offender resides in a municipality, the police department of that municipality; or

(b) if the offender resides in a place other than a municipality, the sheriff's office of the county in which the offender resides.

~~(7)~~(8) (a) "Residence" means the location at which a person regularly resides, regardless of the number of days or nights spent at that location, that can be located by a street address, including a house, apartment building, motel, hotel, or recreational or other vehicle.

(b) The term does not mean a homeless shelter.

~~(8)~~(9) "Sexual offender evaluator" means a person qualified under rules established by the department to conduct psychosexual evaluations of sexual offenders and sexually violent predators.

~~(9)~~(10) (a) "Sexual offense" means~~:~~ any violation, attempt, solicitation, or conspiracy to commit a violation, or flight after the attempt or commission of the following:

~~(a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-301 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-302 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-303 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-502 (if the offender is a professional licensed under Title 37 and commits the offense during any treatment, consultation, interview, or evaluation of a person's physical or mental condition, ailment, disease, or injury), 45-5-502 (3) (if the victim is less than 16 years of age and the offender is 3 or more years older than the victim), 45-5-503 (1), (3), or (4), 45-5-504 (2)(c), 45-5-504 (3) (if the victim is less than 16 years of age and the offender is 4 or more years older than the victim), 45-5-507 (if the victim is less than 18 years of age and the offender is 3 or more years older than the victim or if the victim is 12 years of age or younger and the offender is 18 years of age or older at the time of the offense), 45-5-508, 45-5-601 (3), 45-5-602 (3), 45-5-603 (1)(b), (2)(b), or (2)(c), 45-5-625, 45-5-704, or 45-5-705 ; or~~

(i) 45-5-301, Unlawful restraint, if the victim is less than 18 years of age and the offender is not a parent of the victim;

(ii) 45-5-302, Kidnapping, if the victim is less than 18 years of age and the offender is not a parent of the victim;

(iii) 45-5-303, Aggravated kidnapping, if the victim is less than 18 years of age and the offender is not a parent of the victim;

(iv) 45-5-502(1), (2)(c), and (3), Sexual assault;

(v) 45-5-503, Sexual intercourse without consent;

(vi) 45-5-504(2)(c) and (3), Indecent exposure;

(vii) 45-5-507, Incest, if the victim is less than 18 years of age and the offender is 3 or more years older than the victim, or if the victim is 12 years of age or younger and the offender is 18 years of age or older at the time of the offense;

(viii) 45-5-508, Aggravated sexual intercourse without consent;

(ix) 45-5-601(2)(b) and (3), Prostitution;

(x) 45-5-622(2)(b)(ii), Endangering the welfare of children;

(xi) 45-5-625, Sexual abuse of children;

(xii) 45-5-627(1)(a), Ritual abuse of a minor;

(xiii) 45-5-705, Patronizing a victim of sex trafficking;

(xiv) 45-5-706, Aggravated sex trafficking;

(xv) [section 19 of House Bill No. 112], Child sex trafficking; or

~~(b)~~(xvi) any violation of a law of another state, a tribal government, ~~or~~ the federal government, or the military or a foreign entity that is reasonably equivalent to a violation listed in subsection ~~(9)(a)~~ (10)(a)(i) through (10)(a)(xv) or for which the offender was required to register as a sexual offender after an adjudication or conviction.

(b) The term does not include the exceptions provided for in 45-5-501, 45-5-502, and 45-5-503.

~~(10)~~(11) "Sexual or violent offender" means a person who has been convicted of or, in youth court, found to have committed or been adjudicated for a sexual or violent offense.

~~(11)~~(12) "Sexually violent predator" means a person who:

(a) has been convicted of or, in youth court, found to have committed or been adjudicated for a sexual offense and who suffers from a mental abnormality or a personality disorder that makes the person likely to engage in predatory sexual offenses; or

(b) has been convicted of a sexual offense against a victim 12 years of age or younger and the

offender is 18 years of age or older.

~~(12)~~(13) "Transient" means an offender who has no residence.

~~(13)~~(14) "Violent offense" means:

(a) any violation of or attempt, solicitation, or conspiracy to commit a violation of;

(i) 45-5-102, Deliberate homicide;

(ii) 45-5-103, Mitigated deliberate homicide;

(iii) 45-5-202, Aggravated assault;

(iv) 45-5-206 (third or subsequent offense), Partner or family member assault;

(v) 45-5-210(1)(b), (1)(c), or (1)(d), Assault on a peace officer or judicial officer;

(vi) 45-5-212, Assault on a minor;

(vii) 45-5-213, Assault with a weapon;

(viii) 45-5-215, Strangulation of a partner or family member;

(ix) 45-5-302 (if the victim is not a minor), Kidnapping;

(x) 45-5-303 (if the victim is not a minor), Aggravated kidnapping;

(xi) 45-5-401, Robbery;

(xii) 45-6-103, Arson; or

(xiii) 45-9-132; Operation of unlawful clandestine laboratory; or

(b) any violation of a law of another state, a tribal government, ~~or~~ the federal government, or the military or a foreign entity reasonably equivalent to a violation listed in subsection ~~(13)(a)~~ (14)(a)."

COORDINATION SECTION. **SECTION 8. COORDINATION INSTRUCTION.** (1) IF HOUSE BILL NO. 112, HOUSE BILL NO. 525, AND [THIS ACT] ARE PASSED AND APPROVED AND ALL THREE CONTAIN A SECTION THAT AMENDS 46-23-502, THEN THE SECTION IN HOUSE BILL NO. 525 THAT AMENDS 46-23-502 IS VOID AND [SECTION 7 OF THIS ACT], AMENDING 46-23-502, MUST BE FURTHER AMENDED SO THAT 46-23-502(10)(A)(IV) READS:

"(IV) 45-5-502(1), (2)(C), (3), AND (4), SEXUAL ASSAULT;".

(2) IF HOUSE BILL NO. 112 IS NOT PASSED AND APPROVED AND HOUSE BILL NO. 525 AND [THIS ACT] ARE PASSED AND APPROVED, THEN THE SECTION IN HOUSE BILL NO. 525 THAT AMENDS 46-23-502 IS VOID AND [SECTION 1 OF THIS ACT], AMENDING 46-23-502, MUST BE FURTHER AMENDED SO THAT 46-23-502(10)(A)(IV) READS:

"(IV) 45-5-502(1), (2)(C), (3), AND (4), SEXUAL ASSAULT;".

COORDINATION SECTION. **SECTION 9. COORDINATION INSTRUCTION.** (1) IF HOUSE BILL NO. 112, SENATE BILL NO. 345, AND [THIS ACT] ARE PASSED AND APPROVED AND ALL THREE CONTAIN A SECTION THAT AMENDS 46-23-502, THEN THE SECTION IN SENATE BILL NO. 345 THAT AMENDS 46-23-502 IS VOID AND [SECTION 7 OF THIS ACT], AMENDING 46-23-502, MUST BE FURTHER AMENDED SO THAT THE DEFINITION OF "SEXUAL OFFENSE" IN 46-23-502(10)(A) INCLUDES THE FOLLOWING OFFENSE:

45-8-218, DEVIATE SEXUAL CONDUCT.

(2) IF HOUSE BILL NO. 112 IS NOT PASSED AND APPROVED AND SENATE BILL NO. 345 AND [THIS ACT] ARE PASSED AND APPROVED, THEN THE SECTION IN SENATE BILL NO. 345 THAT AMENDS 46-23-502 IS VOID AND [SECTION 1 OF THIS ACT], AMENDING 46-23-502, MUST BE FURTHER AMENDED SO THAT THE DEFINITION OF "SEXUAL OFFENSE" IN 46-23-502(10)(A) INCLUDES THE FOLLOWING OFFENSE:

45-8-218, DEVIATE SEXUAL CONDUCT.

- END -

SENATE BILL NO. 38

INTRODUCED BY B. BROWN

BY REQUEST OF THE DEPARTMENT OF JUSTICE

A BILL FOR AN ACT ENTITLED: “AN ACT GENERALLY REVISING STATUTES RELATED TO LEVEL DESIGNATIONS FOR SEXUAL OFFENDERS; PROVIDING DEFINITIONS; REQUIRING ADDITIONAL INFORMATION FROM OFFENDERS REGARDING ELECTRONIC AND COMMUNICATIONS DATA AND PROFESSIONAL LICENSES; REQUIRING NOTICE WHEN AN OFFENDER IS LEAVING THE STATE; PROVIDING OPPORTUNITIES FOR CERTAIN OFFENDERS TO BE REMOVED FROM THE REGISTRY; PROVIDING NOTICE REQUIREMENTS FOR PSYCHOSEXUAL EVALUATIONS; AND AMENDING SECTIONS 46-23-502, 46-23-504, 46-23-505, 46-23-506, 46-23-508, AND 46-23-509, MCA.”

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 46-23-502, MCA, is amended to read:

"**46-23-502. Definitions.** As used in Title 45, chapter 5, part 3 and parts 5 through 7, 46-18-255, and this part, the following definitions apply:

(1) "Department" means the department of corrections provided for in 2-15-2301.

(2) "Foreign offenses" means a conviction for a sexual offense involving any of the conduct listed in this section that was obtained under the laws of Canada, the United Kingdom, Australia, or New Zealand, or under the laws of any foreign country when the United States department of state, in its country reports on human rights practices, has concluded that an independent judiciary generally or vigorously enforced the right to a fair trial in that country during the year in which the conviction occurred.

~~(2)~~(3) "Mental abnormality" means a congenital or acquired condition that affects the mental, emotional, or volitional capacity of a person in a manner that predisposes the person to the commission of one or more sexual offenses to a degree that makes the person a menace to the health and safety of other persons.

~~(3)~~(4) "Municipality" means an entity that has incorporated as a city or town.

~~(4)~~(5) "Personality disorder" means a personality disorder as defined in the fourth edition of the

Diagnostic and Statistical Manual of Mental Disorders adopted by the American psychiatric association.

~~(5)~~(6) "Predatory sexual offense" means a sexual offense committed against a stranger or against a person with whom a relationship has been established or furthered for the primary purpose of victimization.

~~(6)~~(7) "Registration agency" means:

(a) if the offender resides in a municipality, the police department of that municipality; or

(b) if the offender resides in a place other than a municipality, the sheriff's office of the county in which the offender resides.

~~(7)~~(8) (a) "Residence" means the location at which a person regularly resides, regardless of the number of days or nights spent at that location, that can be located by a street address, including a house, apartment building, motel, hotel, or recreational or other vehicle.

(b) The term does not mean a homeless shelter.

~~(8)~~(9) "Sexual offender evaluator" means a person qualified under rules established by the department to conduct psychosexual evaluations of sexual offenders and sexually violent predators.

~~(9)~~(10) (a) "Sexual offense" means~~:~~ any violation, attempt, solicitation, or conspiracy to commit a violation, or flight after the attempt or commission of the following:

~~(a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-301 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-302 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-303 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-502 (if the offender is a professional licensed under Title 37 and commits the offense during any treatment, consultation, interview, or evaluation of a person's physical or mental condition, ailment, disease, or injury), 45-5-502 (3) (if the victim is less than 16 years of age and the offender is 3 or more years older than the victim), 45-5-503 (1), (3), or (4), 45-5-504 (2)(c), 45-5-504 (3) (if the victim is less than 16 years of age and the offender is 4 or more years older than the victim), 45-5-507 (if the victim is less than 18 years of age and the offender is 3 or more years older than the victim or if the victim is 12 years of age or younger and the offender is 18 years of age or older at the time of the offense), 45-5-508, 45-5-601 (3), 45-5-602 (3), 45-5-603 (1)(b), (2)(b), or (2)(c), 45-5-625, 45-5-704, or 45-5-705 ; or~~

(i) 45-5-301, Unlawful restraint, if the victim is less than 18 years of age and the offender is not a parent of the victim;

(ii) 45-5-302, Kidnapping, if the victim is less than 18 years of age and the offender is not a parent of the victim;

(iii) 45-5-303, Aggravated kidnapping, if the victim is less than 18 years of age and the offender is not a parent of the victim;

(iv) 45-5-502 ~~(1),~~ (2)(c)~~,~~ AND (3), ~~(4), and (5),~~ Sexual assault;

(v) 45-5-503, Sexual intercourse without consent;

(vi) 45-5-504(2)(c) and (3), Indecent exposure;

(vii) 45-5-507, Incest, if the victim is less than 18 years of age and the offender is 3 or more years older than the victim, or if the victim is 12 years of age or younger and the offender is 18 years of age or older at the time of the offense;

(viii) 45-5-508, Aggravated sexual intercourse without consent;

(ix) 45-5-601(2)(b), (3), and (4) Prostitution;

(x) 45-5-602(3) and (4), Promoting prostitution;

(xi) 45-5-603, Aggravated promotion of prostitution;

(xii) 45-5-622(2)(b)(ii), Endangering welfare of children;

(xiii) 45-5-625, Sexual abuse of children;

(xiv) 45-5-627(1)(a), Ritual abuse of minor;

(xv) 45-5-704, Sexual servitude;

(xvi) 45-5-705, Patronizing victim of sexual servitude; or

~~(b)~~(xvii) any violation of a law of another state, a tribal government, ~~or~~ the federal government, or the military or a foreign entity that is reasonably equivalent to a violation listed in subsection ~~(9)(a)~~ (10)(a)(i) through (10)(a)(xvi) or for which the offender was required to register as a sexual offender after an adjudication or conviction.

(b) This term does not include the exceptions provided for in 45-5-501, 45-5-502, and 45-5-503.

~~(10)~~(11) "Sexual or violent offender" means a person who has been convicted of or, in youth court, found to have committed or been adjudicated for a sexual or violent offense.

~~(11)~~(12) "Sexually violent predator" means a person who:

(a) has been convicted of or, in youth court, found to have committed or been adjudicated for a

sexual offense and who suffers from a mental abnormality or a personality disorder that makes the person likely to engage in predatory sexual offenses; or

(b) has been convicted of a sexual offense against a victim 12 years of age or younger and the offender is 18 years of age or older.

~~(12)~~(13) "Transient" means an offender who has no residence.

~~(13)~~(14) "Violent offense" means:

(a) any violation of or attempt, solicitation, or conspiracy to commit a violation of:

(i) 45-5-102, Deliberate homicide;

(ii) 45-5-103, Mitigated deliberate homicide;

(iii) 45-5-202, Aggravated assault;

(iv) 45-5-206 (third or subsequent offense), Partner or family member assault;

(v) 45-5-210(1)(b), (1)(c), or (1)(d), Assault on a peace officer or judicial officer;

(vi) 45-5-212, Assault on a minor;

(vii) 45-5-213, Assault with weapon;

(viii) 45-5-215, Strangulation of partner or family member;

(ix) 45-5-302 (if the victim is not a minor), Kidnapping ;

(x) 45-5-303 (if the victim is not a minor), Aggravated kidnapping;

(xi) 45-5-401, Robbery;

(xii) 45-6-103, Arson; or

(xiii) 45-9-132, Operation of unlawful clandestine laboratory; or

(b) any violation of a law of another state, a tribal government, ~~or~~ the federal government, or the military or a foreign entity reasonably equivalent to a violation listed in subsection ~~(13)(a)~~ (14)(a)."

Section 2. Section 46-23-504, MCA, is amended to read:

"**46-23-504. Persons required to register -- procedure.** (1) Except as provided in 41-5-1513 and 45-5-503(5), a sexual or violent offender:

(a) shall register immediately upon conclusion of the sentencing hearing if the offender is not sentenced to confinement or is not sentenced to the department and placed in confinement by the department;

(b) must be registered as provided in 46-23-503 at least 10 days prior to release from confinement if sentenced to confinement or sentenced to the department and placed in confinement by the department;

(c) shall register within 3 business days of entering a county of this state for the purpose of residing or setting up a temporary residence for 10 days or more or for an aggregate period exceeding 30 days in a calendar year; and

(d) who is a transient shall register within 3 business days of entering a county of this state.

(2) Registration under subsection ~~(1)(a), (1)(c), or (1)(d)~~ (1) must be with the appropriate registration agency. If an offender registers with a police department, the department shall notify the sheriff's office of the county in which the municipality is located of the registration. The probation officer having supervision over an offender required to register under subsection (1)(a) shall verify the offender's registration status with the appropriate registration agency.

(3) At the time of registering, the offender shall sign a statement in writing giving the information required by subsections (3)(a) through ~~(3)(h)~~ (3)(k) and any other information required by the department of justice. The registration agency shall fingerprint the offender, unless the offender's fingerprints are on file with the department of justice, photograph the offender, and obtain a DNA sample from the offender. Within 3 days, the registration agency shall send copies of the statement, fingerprints, and photographs to the department of justice. The registration agency shall send the DNA sample to the department of justice for analysis and entry of the DNA record into the DNA identification index. The registration agency shall require an offender given a level 2 or level 3 designation to appear before the registration agency for a new photograph every year. The information collected from the offender at the time of registration must include:

(a) the name of the offender and any aliases used by the offender;

(b) the offender's social security number;

(c) the residence information required by subsection (4);

(d) the name and address of any business or other place where the offender is or will be an employee;

(e) the name and address of any school where the offender will be a student;

(f) the offender's driver's license number;

(g) the description, registration number or identifier, and license number of ~~any~~ all motor ~~vehicle~~

vehicles owned or operated by the offender; and

(h) ~~all of the offender's e-mail addresses and social media screen names.~~The following information related to the offender's internet activity:

(i) all e-mail addresses used by the offender;

(ii) all instant message addresses and identifiers;

(iii) all other designations or monikers used for self-identification in internet communications or postings; and

(iv) all designations used by the offender for the purpose of routing or self-identification in internet communications, postings, or social media accounts;

(i) any passports held or used by the offender. The department or its designee shall make a photocopy of the passports.

(j) all telephone numbers and any other designations used by the offender for the purposes of routing or self-identification in telephonic communications, including but not limited to:

(i) all cellular telephone numbers;

(ii) all landline telephone numbers; and

(iii) all voice over internet protocol telephone numbers; and

(k) all professional licenses, including the licensing number, licensing agency, and any other identifying information about a professional license issued to the offender that authorizes the offender to engage in an occupation or carry out a trade or business.

(4) (a) If, at the time of registration, the offender regularly resides in more than one county or municipality, the offender shall register with the registration agency of each county or municipality in which the offender resides. If an offender resides in more than one location within the same county or municipality, the registration agency shall require the offender to provide all of the locations where the offender regularly resides and to designate one of them as the offender's primary residence.

(b) Registration of more than one residence pursuant to this section is an exception from the single residence rule provided in 1-1-215.

(5) A transient shall report monthly, in person, to the registration agency with which the transient registered pursuant to subsection (1)(d). The transient shall report on a day specified by the registration agency

and during the normal business hours of that agency. On that day, the transient shall provide the registration agency with the information listed in subsections (3)(a) through ~~(3)(h)~~ (3)(k). The registration agency to which the transient reports may also require the transient to provide the locations where the transient stayed during the previous 30 days and may stay during the next 30 days.

(6) (a) The department of justice shall mail a registration verification form:

(i) each 90 days to an offender designated as a level 3 offender under 46-23-509;

(ii) each 180 days to an offender designated as a level 2 offender under 46-23-509; and

(iii) each year to a violent offender or an offender designated as a level 1 offender under 46-23-509.

(b) If the offender is a transient, the department of justice shall mail the offender's registration verification form to the registration agency with which the offender last registered.

(c) The form must require the offender's notarized signature. Within 10 days after receipt of the form, the offender shall complete the form and return it to the registration agency where the offender last registered or, if the offender was initially registered pursuant to subsection (1)(b), to the registration agency in the county or municipality in which the offender is located. A sexual offender shall return the form to the appropriate registration agency in person, and at the time that the sexual offender returns the registration verification form, the registration agency shall take a photograph of the offender and collect a DNA sample if one has not already been collected. The registration agency shall send the DNA sample to the department of justice for analysis and entry into the DNA identification index.

(7) Within 3 days after receipt of a registration verification form, the registration agency shall provide a copy of the form and most recent photograph to the department of justice.

(8) The offender is responsible, if able to pay, for costs associated with registration. The fees charged for registration may not exceed the actual costs of registration. The department of justice may adopt a rule establishing fees to cover registration costs incurred by the department of justice in maintaining registration and address verification records. The fees must be deposited in the general fund.

(9) The clerk of the district court in the county in which a person is convicted of a sexual or violent offense shall notify the sheriff in that county of the conviction within 10 days after entry of the judgment."

Section 3. Section 46-23-505, MCA, is amended to read:

"**46-23-505. Notice of change of name or residence or student, employment, or transient status -- duty to inform -- forwarding of information.** (1) If an offender required to register under this part has a change of name or residence or a change in student, employment, or transient status, the offender shall within 3 business days of the change appear in person and give notification of the change to the registration agency with whom the offender last registered or, if the offender was initially registered under 46-23-504(1)(b), to the registration agency for the county or municipality from which the offender is moving. The registration agency shall require the offender to appear before the registration agency for a new photograph every year.

(2) If an offender required to register under this part is a transient, the offender shall provide written notification to the registration agency with which the offender last registered or, if the offender initially registered pursuant to 46-23-504(1)(b), shall provide notice within 3 business days to the registration agency in the county or municipality in which the offender resides.

(3) Within 3 business days after receipt of the information concerning the new name or residence or a change in the student, employment, or transient status, the registration agency shall forward the information to the department of justice, which shall forward a copy of the information and photograph to:

(a) in the event of a change in residence, the registration agency for the county to which the offender moves and, if the offender lives in a municipality, the registration agency for that municipality to which the offender moves;

(b) in the event of a change of name or of student, employment, or transient status, the registration agency of the appropriate county or municipality.

(4) If an offender who is required to register under this part is physically absent from the offender's county of residence for more than 10 consecutive days, the offender shall register in the county where the offender is physically located on the 11th day even if the offender claims to maintain a residence, as defined in 46-23-502, in that county. The offender shall register again in the offender's county of residence when the offender returns to that county.

(5) If an offender is required to register under subsection (4), the offender shall register in any subsequent county where the offender is present for more than 24 hours until the offender registers again in the offender's county of residence.

(6) In the event an offender will be absent from this state for more than 7 days, the offender shall provide notice with the information required under this section in person to the registering agency no later than 3 days before their scheduled travel. The registering agency shall forward the information to the department of justice, which shall then notify the provided jurisdiction."

Section 4. Section 46-23-506, MCA, is amended to read:

"**46-23-506. ~~Duration~~ Duty of registration -- duration, frequency, reduction, and relief.** (1) A sexual offender required to register under this part shall register for the remainder of the sexual offender's life, except as provided in subsection (3) or during a period of time during which the sexual offender is in prison.

(2) (a) A violent offender required to register under this part shall register for the 10 years following release from confinement or, if not confined following sentencing, for the 10 years following the conclusion of the sentencing hearing and after registering for 10 years, is automatically relieved of the duty to register unless convicted as provided in subsection (2)(b).

(b) If convicted during the 10-year period provided in subsection (2)(a) of failing to register or keep registration current or of a felony, the violent offender shall register for the remainder of the violent offender's life unless relieved of the duty to register as provided in subsection ~~(3)~~ (2)(e).

(c) When ~~an~~ a violent offender is relieved of the duty to register under subsection (2)(a), the department of justice shall remove the violent offender from the registry.

(d) Petitions for relief from registration under this part must be filed in the appropriate Montana district court. Orders or other documents granting relief from registration requirements that originated in other jurisdictions are not valid in Montana.

(e) Except as provided in subsection (5), at any time after 10 years of registration for a violent offender registered as provided in subsection (2)(b), a violent offender may petition the sentencing court or the district court for the judicial district in which the violent offender resides for an order relieving the violent offender of the duty to register. The petition must be served on the county attorney in the county where the petition is filed. Prior to a hearing on the petition, the county attorney shall mail a copy of the petition to the victim of the last offense for which the violent offender was convicted if the victim's address is reasonably available. The court shall consider any written or oral statements of the victim. The court may grant the petition

on finding that:

(i) the violent offender has remained a law-abiding citizen; and

(ii) continued registration is not necessary for public protection and that relief from registration is in the best interests of society.

(3) Except as provided in subsection ~~(5)~~ (7), at any time after 10 years of registration for ~~a violent offender registered as provided in subsection (2)(b) or~~ a level 1 sexual offender and at any time after 25 years of registration for a level 2 sexual offender, an offender may petition the sentencing court or the district court for the judicial district in which the offender resides for an order relieving the offender of the duty to register. The petition must be served on the county attorney in the county where the petition is filed. Prior to a hearing on the petition, the county attorney shall mail a copy of the petition to the victim of the last offense for which the offender was convicted if the victim's address is reasonably available. The court shall consider any written or oral statements of the victim. The court may grant the petition ~~upon~~ on finding that:

(a) the offender has ~~remained a law-abiding citizen~~ maintained a clean record during their period of registration; and

(b) continued registration is not necessary for public protection and that relief from registration is in the best interests of society.

(4) A level 3 sexual offender may have their period of registration reduced to 25 years if the sexual offender was adjudicated delinquent of an offense as a juvenile that required level 3 sexual offender registration and the sexual offender has maintained a clean record for 25 consecutive years.

(5) For the purposes of this section, the sexual offender has a clean record if, during the period of time in which the sexual offender was required to register as a sexual offender:

(a) the sexual offender was not convicted of any felony offense;

(b) the sexual offender was not convicted of any sexual offense;

(c) the sexual offender successfully completed, without revocation, any period of supervised release, probation, or parole; and

(d) the sexual offender has successfully completed an appropriate sexual offender treatment program.

~~(4)~~(6) The offender may move that all or part of the proceedings in a hearing under ~~subsection~~

subsections (2)(e) and (3) be closed to the public, or the judge may close them on the judge's own motion. If a proceeding under ~~subsection~~ subsections (2)(e) and (3) is closed to the public, the judge shall permit a victim of the offense to be present unless the judge determines that exclusion of the victim is necessary to protect the offender's right of privacy or the safety of the victim. If the victim is present, the judge, at the victim's request, shall permit the presence of an individual to provide support to the victim unless the judge determines that exclusion of the individual is necessary to protect the offender's right to privacy.

~~(5)~~(7) Subsection (3) does not apply to an offender who was convicted of:

(a) a violation of 45-5-503 if:

(i) the victim was compelled to submit by force, as defined in 45-5-501, against the victim or another; or

(ii) at the time the offense occurred, the victim was under 12 years of age;

(b) a violation of 45-5-507 if at the time the offense occurred the victim was under 12 years of age and the offender was 3 or more years older than the victim;

(c) a second or subsequent sexual or violent offense that requires registration; or

(d) a sexual offense and was designated as a sexually violent predator under 46-23-509."

Section 5. Section 46-23-508, MCA, is amended to read:

"**46-23-508. Dissemination of information.** (1) Information maintained under this part is confidential criminal justice information, as defined in 44-5-103, except that:

(a) the name and address of a registered sexual or violent offender are public criminal justice information, as defined in 44-5-103; and

(b) the department of justice or the registration agency shall release any offender registration information that it possesses relevant to the public if the department of justice or the registration agency determines that a registered offender is a risk to the safety of the community and that disclosure of the registration information that it possesses may protect the public and, at a minimum:

(i) if the offender is also a violent offender, the department of justice shall and the registration agency may disseminate to the victim and the public:

(A) the offender's name; and

(B) the offenses for which the offender is required to register under this part;

(ii) if ~~an~~ a sexual offender was given a level 1 designation under 46-23-509, the department of justice shall and the registration agency may disseminate to the victim and the public:

(A) the offender's address;

(B) the name, photograph, and physical description of the offender;

(C) the offender's date of birth; ~~and~~

(D) the offenses for which the offender is required to register under this part;

(E) the offender's employer address; and

(F) the offender's post-secondary school address.

(iii) if ~~an~~ a sexual offender was given a level 1 designation and committed an offense against a minor or was given a level 2 designation under 46-23-509, the department of justice shall and the registration agency may disseminate to the victim and the public:

(A) the offender's address;

(B) the type of victim targeted by the offense;

(C) the name, photograph, and physical description of the offender;

(D) the offender's date of birth;

(E) the license plate number and a description of any motor vehicle owned or operated by the offender;

(F) the offenses for which the offender is required to register under this part; ~~and~~

(G) the offender's employer address;

(H) the offender's post-secondary school address; and

~~(G)~~(I) any conditions imposed by the court upon the offender for the safety of the public; and

(iv) if ~~an~~ a sexual offender was given a level 3 designation under 46-23-509, the department of justice and the registration agency shall give the victim and the public notification that includes the information contained in subsection (1)(b)(iii). The notification must also include the date of the offender's release from confinement or, if not confined, the date the offender was sentenced, with a notation that the offender was not confined, and must include the community in which the offense occurred.

(c) prior to release of information under subsection (1)(b), a registration agency may, in its sole

discretion, request an in camera review by a district court of the determination by the registration agency under subsection (1)(b). The court shall review a request under this subsection (1)(c) and shall, as soon as possible, render its opinion so that release of the information is not delayed beyond release of the offender from confinement.

(2) The identity of a victim of an offense for which registration is required under this part may not be released by a registration agency without the permission of the victim.

(3) Dissemination to the public of information allowed or required by this section may be done by newspaper, paper flyers, the internet, or any other media determined by the disseminating entity. In determining the method of dissemination, the disseminating entity should consider the level of risk posed by the offender to the public.

(4) The department of justice shall develop a model community notification policy to assist registration agencies in implementing the dissemination provisions of this section."

Section 6. Section 46-23-509, MCA, is amended to read:

"**46-23-509. Psychosexual evaluations and sexual offender designations.** (1) Prior to sentencing of a person convicted of a sexual offense, a sexual offender evaluator who has a license endorsement as provided for in 37-1-139 shall provide the court with a psychosexual evaluation report recommending one of the following levels of designation for the offender:

(a) level 1, the risk of a repeat sexual offense is low;

(b) level 2, the risk of a repeat sexual offense is moderate;

(c) level 3, the risk of a repeat sexual offense is high, there is a threat to public safety, and the sexual offender evaluator believes that the offender is a sexually violent predator.

(2) Upon sentencing the offender, the court shall:

(a) review the psychosexual evaluation report, any statement by a victim, and any statement by the offender;

(b) designate the offender as level 1, 2, or 3; and

(c) designate a level 3 offender as a sexually violent predator.

(3) An offender designated as a level 2 offender or given a level designation by another state, the

federal government, or the department under subsection (5) that is determined by the court to be similar to level 2 may petition the sentencing court or the district court for the judicial district in which the offender resides to change the offender's designation if the offender has enrolled in and successfully completed the treatment phase of either the prison's sexual offender treatment program or of an equivalent program approved by the department. After considering the petition, the court may change the offender's risk level designation if the court finds by clear and convincing evidence that the offender's risk of committing a repeat sexual offense has changed since the time sentence was imposed. The court shall impose one of the three risk levels specified in this section.

(4) If, at the time of sentencing, the sentencing judge did not apply a level designation to a sexual offender who is required to register under this part and who was sentenced prior to October 1, 1997, the department shall designate the offender as level 1, 2, or 3 when the offender is released from confinement.

(5) If an offense is covered by ~~46-23-502(9)(b)~~ 46-23-502(10)(q), the offender registers under 46-23-504(1)(c), and the offender was given a risk level designation after conviction by another state or the federal government, the department of justice may give the offender the risk level designation assigned by the other state or the federal government. All offenders convicted in another state or by the federal government who are not currently under the supervision of the department or the youth court and were not given a risk level designation after conviction shall provide to the department of justice all prior risk assessments and psychosexual evaluations done to evaluate the offender's risk to reoffend. Any offender without a risk assessment or psychosexual evaluation shall, at the offender's expense, undergo a psychosexual evaluation with a sexual offender evaluator who has a license endorsement as provided for in 37-1-139. The results of the psychosexual evaluation may be requested by the attorney general or a county attorney for purposes of petitioning a district court to assign a risk level designation.

(6) The lack of a fixed residence is a factor that may be considered by the sentencing court or by the department in determining the risk level to be assigned to an offender pursuant to this section.

(7) Upon obtaining information that indicates that a sexual offender who is required to register under this part does not have a level 1, 2, or 3 designation, the offender, the attorney general, the county attorney that prosecuted the offender and obtained a conviction for a sexual offense, or the county attorney for the county in which the offender resides may, at any time, petition the district court that sentenced the offender

for a sexual offense or the district court for the judicial district in which the offender resides to designate the offender as level 1, 2, or 3. Upon the filing of the petition, the court may order a psychosexual evaluation report at the petitioner's expense, or order that the results of all prior psychosexual evaluations be provided to all parties. The court shall provide the offender with an opportunity for a hearing prior to designating the offender. The petitioner shall provide the offender, the attorney general, and the county attorney that prosecuted the offender with notice of the petition and notice of the hearing. As provided in 46-23-506(2)(d), petitions for relief from registration under this part must be filed in the appropriate Montana district court. Orders or other documents granting relief from registration requirements that originated in other jurisdictions are not valid in Montana."

COORDINATION SECTION. **SECTION 7. COORDINATION INSTRUCTION.** IF BOTH HOUSE BILL NO. 112 AND [THIS ACT] ARE PASSED AND APPROVED AND BOTH CONTAIN A SECTION THAT AMENDS 46-23-502, THEN THE SECTIONS THAT AMEND 46-23-502 ARE VOID AND 46-23-502 MUST BE AMENDED AS FOLLOWS:

"**46-23-502. Definitions.** As used in Title 45, chapter 5, part 3 and parts 5 through 7, 46-18-255, and this part, the following definitions apply:

(1) "Department" means the department of corrections provided for in 2-15-2301.

(2) "Foreign offenses" means a conviction for a sexual offense involving any of the conduct listed in this section that was obtained under the laws of Canada, the United Kingdom, Australia, or New Zealand, or under the laws of any foreign country when the United States department of state, in its country reports on human rights practices, has concluded that an independent judiciary generally or vigorously enforced the right to a fair trial in that country during the year in which the conviction was obtained.

~~(2)~~(3) "Mental abnormality" means a congenital or acquired condition that affects the mental, emotional, or volitional capacity of a person in a manner that predisposes the person to the commission of one or more sexual offenses to a degree that makes the person a menace to the health and safety of other persons.

~~(3)~~(4) "Municipality" means an entity that has incorporated as a city or town.

~~(4)~~(5) "Personality disorder" means a personality disorder as defined in the fourth edition of the Diagnostic and Statistical Manual of Mental Disorders adopted by the American psychiatric association.

~~(5)~~(6) "Predatory sexual offense" means a sexual offense committed against a stranger or against a

person with whom a relationship has been established or furthered for the primary purpose of victimization.

~~(6)~~(7) "Registration agency" means:

(a) if the offender resides in a municipality, the police department of that municipality; or

(b) if the offender resides in a place other than a municipality, the sheriff's office of the county in which the offender resides.

~~(7)~~(8) (a) "Residence" means the location at which a person regularly resides, regardless of the number of days or nights spent at that location, that can be located by a street address, including a house, apartment building, motel, hotel, or recreational or other vehicle.

(b) The term does not mean a homeless shelter.

~~(8)~~(9) "Sexual offender evaluator" means a person qualified under rules established by the department to conduct psychosexual evaluations of sexual offenders and sexually violent predators.

~~(9)~~(10) (a) "Sexual offense" means~~:~~ any violation, attempt, solicitation, or conspiracy to commit a violation, or flight after the attempt or commission of the following:

~~(a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-301 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-302 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-303 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-502 (if the offender is a professional licensed under Title 37 and commits the offense during any treatment, consultation, interview, or evaluation of a person's physical or mental condition, ailment, disease, or injury), 45-5-502 (3) (if the victim is less than 16 years of age and the offender is 3 or more years older than the victim), 45-5-503 (1), (3), or (4), 45-5-504 (2)(c), 45-5-504 (3) (if the victim is less than 16 years of age and the offender is 4 or more years older than the victim), 45-5-507 (if the victim is less than 18 years of age and the offender is 3 or more years older than the victim or if the victim is 12 years of age or younger and the offender is 18 years of age or older at the time of the offense), 45-5-508, 45-5-601 (3), 45-5-602 (3), 45-5-603 (1)(b), (2)(b), or (2)(c), 45-5-625, 45-5-704, or 45-5-705 ; or~~

(i) 45-5-301, Unlawful restraint, if the victim is less than 18 years of age and the offender is not a parent of the victim;

(ii) 45-5-302, Kidnapping, if the victim is less than 18 years of age and the offender is not a parent of the victim;

(iii) 45-5-303, Aggravated kidnapping, if the victim is less than 18 years of age and the offender is not a parent of the victim;

(iv) 45-5-502~~(1),~~ (2)(c)~~,~~ and (3), Sexual assault;

(v) 45-5-503, Sexual intercourse without consent;

(vi) 45-5-504(2)(c) and (3), Indecent exposure;

(vii) 45-5-507, Incest, if the victim is less than 18 years of age and the offender is 3 or more years older than the victim, or if the victim is 12 years of age or younger and the offender is 18 years of age or older at the time of the offense;

(viii) 45-5-508, Aggravated sexual intercourse without consent;

(ix) 45-5-601(2)(b) and (3), Prostitution;

(x) 45-5-622(2)(b)(ii), Endangering the welfare of children;

(xi) 45-5-625, Sexual abuse of children;

(xii) 45-5-627(1)(a), Ritual abuse of a minor;

(xiii) 45-5-705, Patronizing a victim of sex trafficking;

(xiv) 45-5-706, Aggravated sex trafficking;

(xv) [section 19 of House Bill No. 112], Child sex trafficking; or

~~(b)~~(xvi) any violation of a law of another state, a tribal government, ~~or~~ the federal government, or the military or a foreign entity that is reasonably equivalent to a violation listed in subsection ~~(9)(a)~~ (10)(a)(i) through (10)(a)(xv) or for which the offender was required to register as a sexual offender after an adjudication or conviction.

(b) The term does not include the exceptions provided for in 45-5-501, 45-5-502, and 45-5-503.

~~(10)~~(11) "Sexual or violent offender" means a person who has been convicted of or, in youth court, found to have committed or been adjudicated for a sexual or violent offense.

~~(11)~~(12) "Sexually violent predator" means a person who:

(a) has been convicted of or, in youth court, found to have committed or been adjudicated for a sexual offense and who suffers from a mental abnormality or a personality disorder that makes the person likely to engage in predatory sexual offenses; or

(b) has been convicted of a sexual offense against a victim 12 years of age or younger and the

offender is 18 years of age or older.

~~(12)~~(13) "Transient" means an offender who has no residence.

~~(13)~~(14) "Violent offense" means:

(a) any violation of or attempt, solicitation, or conspiracy to commit a violation of;

(i) 45-5-102, Deliberate homicide;

(ii) 45-5-103, Mitigated deliberate homicide;

(iii) 45-5-202, Aggravated assault;

(iv) 45-5-206 (third or subsequent offense), Partner or family member assault;

(v) 45-5-210(1)(b), (1)(c), or (1)(d), Assault on a peace officer or judicial officer;

(vi) 45-5-212, Assault on a minor;

(vii) 45-5-213, Assault with a weapon;

(viii) 45-5-215, Strangulation of a partner or family member;

(ix) 45-5-302 (if the victim is not a minor), Kidnapping;

(x) 45-5-303 (if the victim is not a minor), Aggravated kidnapping;

(xi) 45-5-401, Robbery;

(xii) 45-6-103, Arson; or

(xiii) 45-9-132; Operation of unlawful clandestine laboratory; or

(b) any violation of a law of another state, a tribal government, ~~or~~ the federal government, or the military or a foreign entity reasonably equivalent to a violation listed in subsection ~~(13)(a)~~ (14)(a)."

COORDINATION SECTION. **SECTION 8. COORDINATION INSTRUCTION.** (1) IF HOUSE BILL NO. 112, HOUSE BILL NO. 525, AND [THIS ACT] ARE PASSED AND APPROVED AND ALL THREE CONTAIN A SECTION THAT AMENDS 46-23-502, THEN THE SECTION IN HOUSE BILL NO. 525 THAT AMENDS 46-23-502 IS VOID AND [SECTION 7 OF THIS ACT], AMENDING 46-23-502, MUST BE FURTHER AMENDED SO THAT 46-23-502(10)(A)(IV) READS:

"(IV) 45-5-502~~(1),~~ (2)(C), (3), AND (4), SEXUAL ASSAULT;".

(2) IF HOUSE BILL NO. 112 IS NOT PASSED AND APPROVED AND HOUSE BILL NO. 525 AND [THIS ACT] ARE PASSED AND APPROVED, THEN THE SECTION IN HOUSE BILL NO. 525 THAT AMENDS 46-23-502 IS VOID AND [SECTION 1 OF THIS ACT], AMENDING 46-23-502, MUST BE FURTHER AMENDED SO THAT 46-23-502(10)(A)(IV) READS:

"(IV) 45-5-502(1), (2)(C), (3), AND (4), SEXUAL ASSAULT;".

COORDINATION SECTION. **SECTION 9. COORDINATION INSTRUCTION.** (1) IF HOUSE BILL NO. 112, SENATE BILL NO. 345, AND [THIS ACT] ARE PASSED AND APPROVED AND ALL THREE CONTAIN A SECTION THAT AMENDS 46-23-502, THEN THE SECTION IN SENATE BILL NO. 345 THAT AMENDS 46-23-502 IS VOID AND [SECTION 7 OF THIS ACT], AMENDING 46-23-502, MUST BE FURTHER AMENDED SO THAT THE DEFINITION OF "SEXUAL OFFENSE" IN 46-23-502(10)(A) INCLUDES THE FOLLOWING OFFENSE:

45-8-218, DEVIATE SEXUAL CONDUCT.

(2) IF HOUSE BILL NO. 112 IS NOT PASSED AND APPROVED AND SENATE BILL NO. 345 AND [THIS ACT] ARE PASSED AND APPROVED, THEN THE SECTION IN SENATE BILL NO. 345 THAT AMENDS 46-23-502 IS VOID AND [SECTION 1 OF THIS ACT], AMENDING 46-23-502, MUST BE FURTHER AMENDED SO THAT THE DEFINITION OF "SEXUAL OFFENSE" IN 46-23-502(10)(A) INCLUDES THE FOLLOWING OFFENSE:

45-8-218, DEVIATE SEXUAL CONDUCT.

- END -

MINUTES

MONTANA SENATE

68th LEGISLATURE - REGULAR SESSION

COMMITTEE ON (S) JUDICIARY

Call to Order: Chair Sen. Keith Regier-R, on January 05, 2023 at 9:01 AM, in 303

ROLL CALL

Members Present:	Sen. Keith Regier, Chair (R) Sen. Jen Gross, Vice Chair (D) Sen. Barry Usher, Vice Chair (R) Sen. Bob Brown (R) Sen. Daniel Emrich (R) Sen. Chris Friedel (R) Sen. Steve Hinebauch (R) Sen. Kathy Kelker (D) Sen. Theresa Manzella (R) Sen. Susan Webber (D)
Members Excused:	Sen. Andrea Olsen (D)
Staff Present:	Grace Gibney, Secretary Madelyn Krezowski, Attorney

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:

Hearing & Date Posted:

SB 12 12/12/2022
SB 13 12/12/2022
SB 19 12/12/2022
SB 38 01/02/2023
SB 44 01/02/2023

Executive Action:

HEARING ON SB 44 - Revise laws pertaining to court administration of certain civil cases

Opening Statement:

09:02:40 Sen. Jason Small (R), SD 21, opened the hearing on SB 44, Revise laws pertaining to court administration of certain civil cases.

Proponent Testimony:

09:05:16 Beth Baker, Supreme Court Justice, Montana Access to Justice Commission (ATJC)

09:17:44 Aimee Grmoljez, Partner, Crowley Fleck Law Firm

09:25:19 Sean Slanger, Montana Defense Trial Lawyers Association (MDTL), Montana State Bar Association

09:26:03 Charles Robison, Montana Chamber of Commerce

09:26:33 Rebecca Myers, Montana Magistrates Association

09:26:55 Jessie Luther, Montana Association of Clerks of District Court (MACDC)

09:27:19 Al Smith, Montana Trial Lawyers Association (MTLA)

09:28:08 Alissa Chambers, Montana Justice Foundation (MJF)

09:29:32 Paul Kirgis, self

Opponent Testimony:

09:32:47 John Sinrud, President, Montana Landlords Association (MLA)

EXHIBIT(230105JUSa1)

Informational Witness Testimony:

None

Questions from Committee:

09:44:07 Sen. Kathy Kelker

09:46:22 Justice Beth Baker, ATJC

09:48:57 Sen. Keith Regier

09:53:13 Justice Beth Baker, ATJC

09:53:45	Alison Paul, Executive Director, Montana Legal Services Association (MLSA)
09:55:16	Sen. Chris Friedel
09:59:49	Justice Beth Baker, ATJC
10:00:35	Sen. Theresa Manzella
10:01:08	Alison Paul, MLSA
10:02:21	Sen. Daniel Emrich
10:05:04	Justice Beth Baker, ATJC
10:06:04	Sen. Jen Gross
10:06:34	Justice Beth Baker, ATJC
10:07:53	Sen. Susan Webber
10:08:20	Justice Beth Baker, ATJC
10:09:48	Sen. Bob Brown
10:10:13	Justice Beth Baker, ATJC
10:11:49	Sen. Chris Friedel
10:12:13	John Sinrud, MLA
10:15:04	Sen. Chris Friedel
10:15:51	Justice Beth Baker, ATJC
10:16:29	Sen. Jen Gross
10:18:05	Sean Slanger, MDTL, Montana State Bar
10:18:48	Sen. Susan Webber
10:19:21	Justice Beth Baker, ATJC
10:19:57	Paul Kirgis, self
10:21:46	Sen. Susan Webber
10:22:00	Paul Kirgis, self

10:22:43 Sen. Barry Usher

10:28:48 Justice Beth Baker, ATJC

Closing Statement:

10:29:03 Sen. Jason Small (R), SD 21, closed the hearing on SB 44.

HEARING ON SB 12 - Revising laws on public defender representation related to local ordinances

Opening Statement:

10:31:08 Sen. Ryan Lynch (D), SD 76, opened the hearing on SB 12, Revising laws on public defender representation related to local ordinances.

Discussion:

10:31:25 Sen. Theresa Manzella left the meeting.

Proponent Testimony:

None

Opponent Testimony:

10:33:24 Ben Halverson, Attorney, City of Billings

EXHIBIT(230105JUSa2)

EXHIBIT(230105JUSa3)

EXHIBIT(230105JUSa4)

10:39:37 Thomas Jodoin, Deputy Director, Montana League of Cities and Towns (MLCT)

Informational Witness Testimony:

10:42:03 Brett Schandelson,, Director, Office of State Public Defender

Questions from Committee:

10:42:30 Sen. Chris Friedel

10:44:43 Ben Halverson, City of Billings

10:45:01 Sen. Kathy Kelker

10:46:52 Sen. Ryan Lynch

10:47:48 Sen. Daniel Emrich

10:48:10 Sen. Ryan Lynch

Closing Statement:

10:48:28 Sen. Ryan Lynch (D), SD 76, closed the hearing on SB 12.

HEARING ON SB 38 - Generally revise sex offender level designations

Opening Statement:

10:51:10 Sen. Bob Brown (R), SD 13, opened the hearing on SB 38, Generally revise sex offender level designations.

Proponent Testimony:

10:51:50 Alan Doane, Attorney General's Office, Department of Justice (DOJ)

10:53:01 Suzanne Anders, Montana Department of Justice, Division of Criminal Investigation (DOJ)

Opponent Testimony:

10:54:14 Maggie Bornstein, American Civil Liberties Union of Montana (ACLU)

Informational Witness Testimony:

10:58:05 Anne Dormady, Crime Information Bureau Chief, Montana Division of Criminal Investigation, Department of Justice (DOJ)

10:58:28 David Ortley, Deputy Attorney General, Department of Justice (DOJ)

10:58:49 Clemente Arciga, self/proponent

Questions from Committee:

11:00:47 Sen. Jen Gross

11:01:36 Anne Dormady, DOJ

11:05:49 Suzanne Anders, DOJ

11:07:37 Sen. Daniel Emrich

11:08:19 Suzanne Anders, DOJ

11:09:09 Sen. Chris Friedel

11:11:58 Suzanne Anders, DOJ

11:12:28 Sen. Chris Friedel

11:13:58 Sen. Kathy Kelker

11:16:07 Suzanne Anders, DOJ

Closing Statement:

11:16:30 Sen. Bob Brown (R), SD 13, closed the hearing on SB 38.

HEARING ON SB 13 - Revise DUI laws related to admissible tests for presence of drugs

Opening Statement:

11:20:05 Sen. Keith Regier (R), SD 3, opened the hearing on SB 13, Revise DUI laws related to admissible tests for presence of drugs.

Proponent Testimony:

11:21:53 Jessie Luther, Association of Montana Troopers (AMT)

11:23:23 Dan Smith, Montana Police Protective Association (MPPA)

Opponent Testimony:

11:23:54 Kate Cholewa, Montana Cannabis Industry Association

EXHIBIT(230105JUSa5)

11:25:23 Marilee Watne, Welcome Back Committee (WB)

Informational Witness Testimony:

11:27:27 Brett Schandelson,, Director, Office of State Public Defender

Questions from Committee:

11:27:51 Sen. Chris Friedel

11:29:03 Marilee Watne, WB

11:29:28 Sen. Chris Friedel

11:31:44 Dan Smith, MPPA

11:32:05 Sen. Susan Webber

11:34:14 Jessie Luther, AMT

11:34:33 Sen. Daniel Emrich

11:36:10 Jessie Luther, AMT

Closing Statement:

11:37:50 Sen. Keith Regier (R), SD 3, closed the hearing on SB 13.

HEARING ON SB 19 - Generally revise disorderly conduct sentencing laws

Opening Statement:

11:38:15 Sen. Keith Regier (R), SD 3, opened the hearing on SB 19, Generally revise disorderly conduct sentencing laws.

Proponent Testimony:

11:40:51 Dan Smith, Montana Police Protective Association (MPPA)

11:42:29 Scott Twito, Criminal Justice Oversight Council (CJOC)

EXHIBIT(230105JUSa6)

11:48:27 Sheriff Ross Canen, Criminal Justice Oversight Council (CJOC), Montana Sheriffs and Peace Officers Association (MSPOA)

Opponent Testimony:

11:50:06 Maggie Bornstein, American Civil Liberties Union of Montana (ACLU)

11:52:55 Marilee Watne, self

11:55:40 Benny Lacayo, self

11:58:30 Casey Hugs, self

12:06:34 Hannah Pate, Montana Women Vote

Informational Witness Testimony:

12:08:27 Brett Schandelson, Director, Office of State Public Defender

Questions from Committee:

12:08:53 Sen. Kathy Kelker

12:10:32 Scott Twito, CJOC

12:11:51 Sen. Chris Friedel

12:15:39 Scott Twito, CJOC

12:16:31 Sen. Jen Gross

12:17:47 Sen. Keith Regier-R

Closing Statement:

12:18:25 Sen. Keith Regier (R), SD 3, closed the hearing on SB 19.

ADJOURNMENT

Adjournment: 12:19:31

Grace Gibney, Secretary

Additional Documents:EXHIBIT(230105JUSaad)

Montana State Legislature

2023 Session

Additional Documents

May include the following:

- Business Report
- Roll Call -Attendance
- Standing Committee Reports
- Tabled Bills
- Fiscal Reports [if any]
- Roll Call Votes
- Proxy's
- Visitors sign in sheet.
- Informational Item's
- Witness Statements
- Zoom/Internet Testimony Information
- Any other type of documents such as:
  @ Petitions, {if any} Emails, all documents given to Committee Secretary after meeting. The original exhibit/items are on file at the Montana Historical Society and may be viewed there.

Montana Historical Society Archives,
225 N. Roberts, Helena, MT 59620-1201
E-Document Specialist Susie Hamilton

BUSINESS REPORT

MONTANA SENATE

REGULAR

(S) Judiciary

Date: 01/05/2023 **Time:** 9:00 AM

Place: Capitol **Room:** 303

BILLS and RESOLUTIONS HEARD:

SB 12 Revising laws on public defender representation related to local ordinances - Sen. Ryan Lynch

SB 13 Revise DUI laws related to admissible tests for presence of drugs - Sen. Keith Regier

SB 19 Generally revise disorderly conduct sentencing laws - Sen. Keith Regier

SB 38 Generally revise sex offender level designations - Sen. Bob Brown

SB 44 Revise laws pertaining to court administration of certain civil cases - Sen. Jason Small

EXECUTIVE ACTION TAKEN: None

Comments:

Keith Regier

Sen. Keith Regier-R, Chair

Senate

Roll Call

(S) Judiciary

DATE: 01/05/2023
TIME: 9:00 AM

NAME	PRESENT	ABSENT/EXCUSED
Usher, Barry	X	
Gross, Jen	X	
Hinebauch, Steve	X	
Emrich, Daniel	X	
Webber, Susan	X	
Manzella, Theresa	X	
Olsen, Andrea		X
Brown, Bob	X	
Friedel, Chris	X	
Kelker, Kathy	X	
Regier, Keith	X	

VISITORS REGISTER

MONTANA SENATE
JUDICIARY COMMITTEE

Date: 1-5-22 Bill No: SB 38

Sponsor: Brown

(Insert Short Title)

Please print ~ Please print ~ Please print ~ Please print

NAME	REPRESENTING	Support	Oppose	Informat'l
Suzanne Anders	DOJ	✓		✓
Angie Dormady	DOJ	~~✓~~		✓
David Ortley	DOJ	✓		✓
Alan Dranz	DOJ	✓		
Merilee Watne	WB			✓
[illegible]	WB			✓

Please leave prepared testimony with Committee Secretary. Witness Statement Forms are available if you prefer to submit written testimony.

VISITORS REGISTER

MONTANA SENATE
JUDICIARY COMMITTEE

Date: 1-5-22 Bill No: SB44

Sponsor: Sen. Small

(Insert Short Title)

Please print ~ Please print ~ Please print ~ Please print

NAME	REPRESENTING	Support	Oppose	Informat'l
~~———————~~				
Peter Bolger	MT Access to Justice	✓		
Dan Smith	MT Police Prof. Assn Comm			
Alissa Chambers	MT Justice Foundation	✓		
THOMAS JODOIN	MLCT		I	
John SCARED	MT LANDLORDS ASSOC.		X	
~~Maggie r~~				
Rebecca Mayes	MT Magistrates	X		
~~Bart Halvorson~~	~~City of Bozeman~~	X		
* Sean Slanger	Montana State Bar Montana Defense Trial Lawyers	X		
Jessie Luther	MACDL	X		
Al Smith	MTLA	X		
Charles Robison	MT Chamber	✓		
Jake Brown	Shelter WF	✓		

Please leave prepared testimony with Committee Secretary. Witness Statement Forms are available if you prefer to submit written testimony.

Additional Documents
SENATE: Judiciary
Date: January 5, 23
Bill No. SB13

Hello Chairman Reiger and Grace,

This email contains follow up information to questions that were posed during the hearing on SB 13. If you could please pass along to the committee, I would appreciate it. Thank you.

Question: What is the dissipation rate of alcohol in the body?
Answer: Regarding the metabolism of drugs in the body… alcohol is actually the anomaly as it has a fairly linear absorption and elimination rate. This is roughly .01 BAC (or one drink) per hour.

Question: How many oral fluid tests is the $36,000 cost based on in the fiscal note?
Answer: Page 2 of the fiscal note, assumption 3, estimates 1,240 oral fluid tests would be used each year and cost MHP $31,000. Assumption 4 includes $5,000 for travel costs to provide training on oral fluid testers.

Question: Is 1,240 oral fluid tests enough?
Answer: 1,240 tests is similar to a number of tests that was projected in year one of a four year rollout of the instrument to the highway patrol. It is unknown currently what number may be needed for permanent deployment of the oral fluid testers, but it is assumed that the number will increase over time.

Question: What is the level of THC present to be intoxicated?
Answer: MCA s. 61-8-1002 provides the DUI/DUID offense. Subsection (1)(d) provides: "(d) a noncommercial vehicle or commercial motor vehicle within this state while the person's delta-9-tetrahydrocannabinol level, excluding inactive metabolites, as shown by analysis of the person's blood or other bodily substance, is 5 ng/ml or more;" Unlike alcohol, there is not the same body of research that shows a consistent relationship between the magnitude of impairment and THC concentrations in the body. As a screening device, oral fluid tests are generally set at a cut off of 25 ng/ml to detect the presence of THC in the body. The level is set to avoid false positives, especially those from passive cannabis exposure. It must be noted that 5 ng/ml blood THC concentration is not the same as a 5 ng/ml oral fluid concentration, and a blood test would still be required to determine an evidentiary amount of THC in the body for charging under the statute.

Question: Are other levels of drugs specified for DUID?
Answer: Montana statute only provides specific levels of alcohol and THC to establish impairment for driving under the influence offenses. No other specific levels of drugs are included in statute. It is uncommon for states to have statutory per se levels for various drugs.

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Additional Documents
SENATE: Judiciary
Date: January 5
Bill No. SB44

Access to Justice Commission – SB 44 – Improving Family and Housing Cases

What is the Access to Justice Commission?

- Created by the Supreme Court in 2012, the Commission has 18 members, representing the legislature, state and local courts, the Attorney General's office, tribal communities, the State Bar, the business community, the law school, and legal service providers.
- The Commission evaluates the ability of Montanans to access our court system, engages in long-range planning, and coordinates efforts to improve efficiencies to help all court users to get their legal issues addressed.

What will this legislation do?

- Creates a fund to provide alternative dispute resolution, legal information, and legal assistance to ordinary Montanans who cannot afford an attorney to help with family- or housing-related civil legal problems.
- These are issues like protecting survivors from domestic abuse, securing child support for parents, and facilitating resolution of landlord-tenant disputes.

Who will pay?

- This proposal does not raise taxes and does not take money from the general fund.
- It raises court filing fees in certain civil cases filed in district courts that have had stagnant filing fees for decades.
- It will not affect fees in justices courts or in cases such as probate, adoption, or dissolution of marriage.
- Only people using the court system who can afford to pay a filing fee will pay. People unable to pay a filing fee will still be able to get a fee waiver.

Why do we need this?

Montana's justice system faces significant challenges:

- First, many Montanans are coming to court on their own with life-crisis situations involving basic human needs that the courts must address;
- Second, the resulting inefficiencies and pressures on the court system bring hardship to everyone else who is waiting their turn in a crowded docket, and it becomes more and more difficult to give each case the consideration it deserves.
- Third, court-connected mediation programs work. When parents craft their own parenting plans, they are less likely to return to court for contempt or modification.

Who is eligible to receive funds?

- Court-connected mediation and alternative dispute resolution programs and non-profit organizations or Montana law school clinics that assist persons of limited means with family- or housing-related issues may apply for funding under this program.

SB 44 – Improving the Administration of Family and Housing Cases

Supporting Information

District Court Caseloads

- Domestic Relations cases average between 15 and 20 percent of district court filings. Although filings were down in 2021—likely attributable to the Covid-19 pandemic—case filings are back up in 2022 and on track for close to 10,000 total cases by the end of the calendar year.
- The Workload Assessment Study for Montana District Court Judicial Officers has just been updated for the first time since 2014. Conducted by the National Center for State Courts, it determines a case weight for each case type category by collecting data from individual judges about how much time they are spending in each category. 95% of district court judges and standing masters participated in the time study, yielding a highly accurate account of judicial working time for case-related activities.
    - The study showed that Domestic Relations cases are the third most time-consuming case types, behind only Child Abuse and Neglect cases and Criminal cases.
    - Domestic Relations cases were the ***only*** area in which the time spent per case ***increased*** since 2014, rising from an average of 99 minutes to 140 minutes per case. Assuming 10,000 filings statewide, this is an average of ***nearly 7,000*** extra judge-hours per year. Judges report that the increased time is due to the volume of parties without legal counsel and the increasing complexity of their problems.
- Conservatively based on current data, if 10,000 new domestic relations cases are filed in a one-year period and just 15% are successfully diverted to and resolved through a court-connected mediation program, it would save an estimated **3,500** judge-hours annually.

Montana Legal Services Association Data (2021)

- MLSA is a non-profit organization that provides free civil legal services to low-income Montanans. Of the 3,900 cases it closed in 2021, **69%** involved either family law or housing issues, the case types included in LC0066.
- **95.9%** of all cases MLSA closed were resolved by settlement, administrative action, or brief advice and services. Only 31 (of 1,644) family law cases and 26 (of 1,058) housing cases went to a contested court action.

- Economic impact from MLSA's legal services shows that legal aid helps resolve legal problems and keep Montana families on their feet, which benefits the community at large:
    - Direct amounts to MLSA family law clients (primarily child support payments, property division, or maintenance in marriage dissolution actions): **$874,933**
    - Cost savings from domestic violence advocacy: **$2,814,000** for 938 Domestic Violence cases closed in 2021. (The estimate is based on a CDC study that survivors of physical assault in the previous 12 months experienced an average of 3.4 separate assaults, assumes that MLSA intervention and assistance prevents one assault per family, and applies an average of $3,000 in prevented medical costs based on other studies.)
    - Cost Savings from Eviction Prevention: **$5,802,072** (Conservatively estimates that only 50% of MLSA's low-income housing clients avoided homelessness—1,058 housing cases closed in 2021, multiplied by 50%, and multiplied by the median per person cost of shelter for homeless individuals of $10,968. Cost savings estimate from US HUD.)
- MLSA has the resources to help only half the people who need services. (MLSA served only 3,820 of 8,201 requests that were not referred elsewhere).

Additional Documents
SENATE: Judiciary
Date: January 5
Bill No. SB44

THE SUPREME COURT OF MONTANA

BETH BAKER
JUSTICE

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JUSTICE BUILDING
215 NORTH SANDERS
PO BOX 203001
HELENA, MONTANA 59620-3001

January 5, 2023

Senator Keith Regier
Senate Judiciary Committee
Montana State Capitol
Helena MT 59620

Re: Senate Bill 44

Dear Chairman Regier and Members of the Senate Judiciary Committee:

In response to questions at today's hearing, I advised the Committee that I would provide additional information on two points. First, the Chair asked how many landlord-tenant cases are filed each year. The following table shows the total number of civil cases filed in Justice Court over the past six years and, of those, how many were landlord-tenant disputes:

Year	Total Civil Cases Filed	Landlord-Tenant
2016	29,285	2,971
2017	30,291	3,009
2018	29,527	2,354
2019	32,116	2,500
2020	24,729	1,877
2021	25,929	1,897

It may well be that the dip in filings the previous two years was pandemic-related. We do not yet have the 2022 filing numbers, but I will pass those along as soon as they are compiled.

Second, Vice-Chair Usher asked about information for the pilot program conducted in Flathead County on mediation of family cases. The program was called E-RAMP, which stands for Early Resolution and Mediation Project. The data reported for the one-year pilot period (which concluded just before the onset of the Covid-19 pandemic) showed the following:

56 cases were referred to E-RAMP during the pilot period (excluding cases that were discovered later not to meet preliminary criteria.) Of those, 28 cases (50%) were E-RAMP eligible.

- 18 eligible cases mediated to full settle (86% of mediated cases)
- 1 eligible case mediated to partial settle (5% of mediated cases)
- 3 eligible cases (10%) did not result in settlement on mediation day
- 2 eligible cases one party a no-show on mediation day
- 1 eligible case found an outside faith-based mediator
- 2 eligible cases were scheduled for mediation at the time of the report
- 1 case resolved prior to intake

28 cases (50%) were E-RAMP ineligible. Approximately 69% of these (30 cases) were ineligible either because of self-reported domestic violence or because one party was financially ineligible. As I mentioned at the hearing, we have since been working to refine the standards so that such cases would not be automatically ineligible.

For fully mediated cases, the time lapse between the date a case was contested (a response was filed) until resolution and closure was as follows:

- 50% mediated to full settlement in less than 60 days of response
- 39% mediated to full settlement in 60-90 days of response
- 11% mediated to full settlement in 90-120 days of response

The cases referred but not eligible for E-RAMP provide an interesting comparative analysis for assessing potential impact on court dockets. The time lapse between the date a case was closed (or remained open at the time of the report) was as follows:

- 17% closed within 60 days of response
- 6% closed within 60-90 days of response
- 23% closed in 9-12 months
- 34% remained open after 6 months

I hope this information is helpful. Please let me know if you need anything more.

Sincerely,

Beth Baker

c: Sen. Jason Small

Committee Members and Staff

MINUTES

MONTANA SENATE

68th LEGISLATURE - REGULAR SESSION

COMMITTEE ON (S) JUDICIARY

Call to Order: Chair Keith Regier-R, on January 11, 2023 at 9:01 AM, in 303

ROLL CALL

Members Present:	Sen. Keith Regier, Chair (R) Sen. Jen Gross, Vice Chair (D) Sen. Barry Usher, Vice Chair (R) Sen. Bob Brown (R) Sen. Daniel Emrich (R) Sen. Chris Friedel (R) Sen. Steve Hinebauch (R) Sen. Kathy Kelker (D) Sen. Theresa Manzella (R) Sen. Andrea Olsen (D)
Members Excused:	Sen. Susan Webber (D)
Staff Present:	Julianne Burkhardt, Attorney Grace Gibney, Secretary

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:

Hearing & Date Posted:

SB 47 01/06/2023

Executive Action:

SB 12 DO PASS
SB 19 DO PASS
SB 68 DO PASS AS AMENDED
SB 38 DO PASS
SB 79 TO TABLE
SJ 5 DO PASS
SB 106 DO PASS

HEARING ON SB 47 - Revise commercial drivers license laws to comply with federal requirements

Opening Statement:

09:06:18 Sen. Theresa Manzella (R), SD 85, opened the hearing on SB 47, Revise commercial drivers license laws to comply with federal requirements.

Proponent Testimony:

09:13:50 Malcolm Long, Montana Department of Transportation

EXHIBIT(230111JUSa1)

EXHIBIT(230111JUSa2)

EXHIBIT(230111JUSa3)

EXHIBIT(230111JUSa4)

09:16:11 Brad Marten, Motor Carrier Services Division, Department of Transportation (MDT)

09:23:38 David Smith, Montana Contractors Association

09:24:21 Darryl James, Montana Infrastructure Coalition

09:25:29 Duane Williams, Montana Trucking Association

09:30:05 Jason Todhunter, Montana Logging Association

09:32:01 Jim Dusenberry, Montana Tow Truck Association

09:33:30 Brad Longcake, Montana Petroleum Marketers and Convenience Store Association

09:34:33 Bob Gilbert, Montana Tow Truck Association

09:37:05 Kyle Ricketts, self

Opponent Testimony:

09:38:45 Senator Carl Glimm, Senate District 2

Informational Witness Testimony:

09:47:41 Laurie Bakri, Montana Motor Vehicle Division (MVD)

Questions from Committee:

09:48:34 Sen. Kathy Kelker

09:48:56 Brad Marten, MDT

09:52:27 Chair Keith Regier

09:53:35 Brad Marten, MDT

09:56:48 Sen. Bob Brown

09:57:11 Laurie Bakri, MVD

09:58:07 Vice Chair Barry Usher

09:58:36 Brad Marten, MDT

10:00:45 Laurie Bakri, MVD

10:01:00 Chair Keith Regier

10:01:10 Brad Marten, MDT

10:02:01 Chair Keith Regier

10:02:14 Laurie Bakri, MVD

10:02:41 Sen. Steve Hinebauch

10:03:03 Brad Marten, MDT

10:03:58 Sen. Chris Friedel

10:04:16 Brad Marten, MDT

10:07:05 Vice Chair Jen Gross

10:07:14 Brad Marten, MDT

10:08:27 Sen. Daniel Emrich

10:08:46 Brad Marten, MDT

Closing Statement:

10:09:27 Sen. Theresa Manzella (R), SD 85, closed the hearing on SB 47.

EXECUTIVE ACTION ON SB 12 - Revising laws on public defender representation related to local ordinances

10:50:05 **Motion:** Sen. Barry Usher moved that **SB 12 DO PASS.**

Discussion:

10:51:26 Sen. Kathy Kelker

10:52:27 Sen. Chris Friedel

10:54:09 Sen. Andrea Olsen

10:54:47 Sen. Kathy Kelker

10:55:14 Sen. Bob Brown

23:56:46 Chair Keith Regier

10:50:05 **Vote:** Motion failed unanimously by voice vote.

10:51:08 **Motion:** Sen. Kathy Kelker moved that **SB 12 BE AMENDED.**

10:51:08 **Vote:** Motion failed 8 - 3 by roll call vote with Sen. Gross, Sen. Kelker, Sen. Regier, voting yes.

10:58:14 **Motion:** Sen. Keith Regier moved that **SB 12 DO PASS.**

10:58:14 **Vote:** Motion carried 8 - 3 by roll call vote with Sen. Gross, Sen. Olsen, Sen. Webber, voting no.
Sen. Webber, By Proxy

EXECUTIVE ACTION ON SB 19 - Generally revise disorderly conduct sentencing laws

11:09:24 **Motion:** Sen. Keith Regier moved that **SB 19 DO PASS.**

Discussion:

11:00:11 Vice Chair Jen Gross

11:01:00 Sen. Andrea Olsen

11:03:02 Chair Keith Regier

11:03:50 Vice Chair Jen Gross

11:04:19 Sen. Daniel Emrich

11:09:24 **Vote:** Motion carried 8 - 3 by voice vote with Sen. Gross, Sen. Olsen, Sen. Webber, voting no.
Sen. Webber, By Proxy

EXECUTIVE ACTION ON SB 68 - Revise laws related to coroner inquests for DOC facilities

11:10:12 **Motion:** Sen. Barry Usher moved that **SB 68 DO PASS.**

Discussion:

11:12:22 Sen. Andrea Olsen

11:10:12 **Vote:** Motion carried 10 - 1 by roll call vote with Sen. Olsen, voting no.

11:10:58 **Motion:** Sen. Barry Usher moved that **SB 68 BE AMENDED.**

11:10:58 **Vote:** Motion carried unanimously by voice vote.

11:11:46 **Motion:** Sen. Barry Usher moved that **SB 68 DO PASS AS AMENDED.**

11:11:46 **Vote:** Motion carried 10 - 1 by roll call vote with Sen. Olsen, voting no.

EXECUTIVE ACTION ON SB 38 - Generally revise sex offender level designations

11:11:39 **Motion:** Sen. Bob Brown moved that **SB 38 DO PASS.**

11:11:39 **Vote:** Motion carried 7 - 4 by roll call vote with Sen. Gross, Sen. Kelker, Sen. Olsen, Sen. Webber, voting no.
Sen. Webber, By Proxy

EXECUTIVE ACTION ON SB 79 - Revise laws relating to peace officer status

11:14:36 **Motion:** Sen. Barry Usher moved that **SB 79 DO PASS.**

Discussion:

11:14:50 Vice Chair Jen Gross

11:14:36 **Vote:** Motion failed 7 - 4 by voice vote with Sen. Gross, Sen. Kelker, Sen. Olsen, Sen. Webber, voting yes.
Sen. Webber, By Proxy

11:15:12 **Motion:** Sen. Barry Usher moved that **SB 79 TO TABLE.**

11:15:12 **Vote:** Motion carried unanimously by voice vote.

EXECUTIVE ACTION ON SJ 5 - Resolution urging Congress to fully fund law enforcement in Indian Country

11:20:00 **Motion:** Sen. Bob Brown moved that **SJ 5 DO PASS.**

Discussion:

11:20:19 Sen. Bob Brown

11:20:00 **Vote:** Motion carried unanimously by voice vote.

EXECUTIVE ACTION ON SB 106 - Revise vehicle and vessel title laws relating to transfer

11:22:07 **Motion:** Sen. Barry Usher moved that **SB 106 DO PASS.**

11:22:07 **Vote:** Motion carried unanimously by voice vote.

ADJOURNMENT

Adjournment: 11:25:10

Grace Gibney, Secretary

Additional Documents:EXHIBIT(230111JUSaad)

Montana State Legislature

2023 Session

Senate Additional Documents

May include the following:

- Business Report
- Roll Call -Attendance
- Standing Committee Reports
- Tabled Bills
- Fiscal Reports [if any]
- Roll Call Votes
- Proxies signed in ink
- Visitor's sign-in sheet.
- Informational Item's
- Witness Statements if any,
- Zoom/Internet Testimony Information & index
- All Public Testimony document(s) may or may not be scanned, but will be on file at the Montana Historical Society for your research.
- Any other type of documents such as:
  @ Petitions, {if any} Emails, all documents given to Committee Secretary before & after meeting.

The original exhibit/items are on file at the Montana Historical Society and may be viewed there.

Montana Historical Society Archives,
225 N. Roberts, Helena, MT 59620-1201
E-Document Specialist Susie Hamilton

BUSINESS REPORT

MONTANA SENATE

REGULAR

(S) Judiciary

Date: 01/11/2023 **Time:** 9:00 AM

Place: Capitol **Room:** 303

BILLS and RESOLUTIONS HEARD:

SB 47 Revise commercial drivers license laws to comply with federal requirements - Sen. Theresa Manzella

EXECUTIVE ACTION TAKEN:

SB 106 Do Pass

SB 12 Do Pass as Amended

SB 19 Do Pass

SB 38 Do Pass

SB 68 Be Amended

SB 79 To Table

SJ 5 Do Pass

Comments:

Keith Regier

Sen. Keith Regier-R, Chair

Senate

Roll Call

(S) Judiciary

DATE: 01/11/2023
TIME: 9:00 AM

NAME	PRESENT	ABSENT/EXCUSED
Brown, Bob	X	
Emrich, Daniel	X	
Friedel, Chris	X	
Gross, Jen	X	
Hinebauch, Steve	X	
Kelker, Kathy	X	
Manzella, Theresa	X	
Olsen, Andrea	X	
Regier, Keith	X	
Usher, Barry	X	
Webber, Susan		X

Senate Standing Committee Report

January 11, 2023

To the President,

We, your committee on **(S) Judiciary** report that **Senate Bill 12** (first reading copy – white) **Do Pass as Amended**. The referenced amendment is SB0012.001.001.

Signed: Keith Regier

Sen. Keith Regier-R, Chair

-End-

Committee Vote:

Yes 8, No 3

SENATE BILL NO. 12

INTRODUCED BY R. LYNCH

BY REQUEST OF THE LAW AND JUSTICE INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS ON PUBLIC DEFENDER REPRESENTATION RELATED TO LOCAL GOVERNMENT ORDINANCES; REQUIRING A LOCAL GOVERNMENT TO REIMBURSE THE OFFICE OF STATE PUBLIC DEFENDER FOR PROVIDING REPRESENTATION TO CERTAIN DEFENDANTS CHARGED WITH AN ALLEGED VIOLATION OF A LOCAL GOVERNMENT ORDINANCE; REQUIRING A LOCAL GOVERNMENT TO PROVIDE ASSISTANCE OF COUNSEL TO CERTAIN DEFENDANTS CHARGED WITH AN ALLEGED VIOLATION OF A LOCAL GOVERNMENT ORDINANCE; REVISING THE PAYMENT OF CERTAIN INVESTIGATION AND TRIAL-RELATED COSTS AND FEES; SUPERSEDING THE UNFUNDED MANDATE LAWS; AND AMENDING SECTIONS 26-2-506, 26-2-508, 26-2-510, 46-1-507, 46-4-304, 46-8-101, 46-8-113, 46-8-114, 46-12-210, 46-14-202, 46-15-115, 47-1-104, AND 47-1-119, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Public defender reimbursement.** (1) Except as provided in subsection (2), if an individual is charged solely with an alleged violation of an ordinance adopted by a local government, the text of the ordinance specifies that the penalty for a violation includes the possibility of incarceration, the prosecutor affirmatively asserts that incarceration will be sought, and the office of state public defender is appointed to represent the individual pursuant to 47-1-104, then the local government that adopted the ordinance shall reimburse the office of state public defender for the following costs associated with providing representation:

(a) hourly costs of appointed counsel as set by the office of state public defender in administrative rule for the actual number of hours spent providing public defense services;

(b) the actual client costs paid by the office of state public defender, including costs related to case investigation, client evaluations, expert witnesses, discovery, exhibits, and other costs directly related to the

defense of the individual; and

(c) other costs paid by the office of state public defender as provided in 47-1-119(4).

(2) If an individual is charged solely with an alleged violation of an ordinance adopted by a local government and the text of that ordinance does not specify a penalty, but another local ordinance that sets the penalty for a violation includes the possibility of incarceration, the local government shall immediately provide counsel to the defendant.

NEW SECTION. **Section 2. Exceptions to assignment of counsel at public expense.** (1) A court may not order the assignment of counsel of a public defender from the office of state public defender under this chapter for a person charged solely with an alleged violation of an ordinance adopted by a local government when the text of that ordinance does not specify a penalty, but another local ordinance that sets the penalty for a violation includes the possibility of incarceration. If the defendant is not charged with any violation of state law for which incarceration is a sentencing option, it is the responsibility of the local government to provide counsel as required in [section 1(2)].

(2) (a) Except as provided in subsection (2)(b), a public defender may not be assigned to act as a court-appointed special advocate or guardian ad litem in a proceeding under the Montana Youth Court Act as provided in Title 41, chapter 5, or in an abuse and neglect proceeding under Title 41, chapter 3.

(b) A private attorney who is contracted with under the provisions of 47-1-121 to provide public defender services under this chapter may be appointed as a court-appointed special advocate or guardian ad litem in a proceeding described in subsection (2)(a) if the appointment is separate from the attorney's service for the statewide public defender system and does not result in a conflict of interest.

Section 3. Section 26-2-506, MCA, is amended to read:

"**26-2-506. Fees paid by party subpoenaing -- exceptions.** (1) Except as provided in subsection (2), fees and compensation of a witness in all criminal and civil actions must be paid by the party who caused the witness to be subpoenaed.

(2) (a) When a witness is subpoenaed by a public defender, as defined in 47-1-103, the fees and expenses must be paid by the office of state public defender as provided in 47-1-119.

Senate Standing Committee Report

January 11, 2023

To the President,

We, your committee on **(S) Judiciary** report that **Senate Bill 68** (first reading copy – white) **Do Pass as Amended**. The referenced amendment is SB0068.001.001.

Signed: _____

Sen. Keith Regier-R, Chair

-End-

Committee Vote:

Yes 10, No 1

SENATE BILL NO. 68

INTRODUCED BY B. USHER

BY REQUEST OF THE DEPARTMENT OF CORRECTIONS

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO CORONER INQUESTS REGARDING DEATHS IN A PRISON OR CORRECTIONAL FACILITY; PROVIDING THAT CORONERS WHO ARE PEACE OFFICERS MAY CONDUCT INQUESTS REGARDING DEATHS IN A PRISON OR CORRECTIONAL FACILITY; AMENDING SECTION 46-4-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 46-4-201, MCA, is amended to read:

"**46-4-201. Inquest -- definition -- when held -- how conducted.** (1) An inquest is a formal inquiry into the causes of and circumstances surrounding the death of a person and is conducted by the coroner before a coroner's jury.

(2) The coroner may hold an inquest only if requested to do so by the county attorney of the county in which death occurred or by the county attorney of the county in which the acts or events causing death occurred. However, the county attorney shall order the coroner to hold an inquest if the death of a person occurs:

(a) in a prison, jail, or other correctional facility and is not caused by the terminal condition, as defined in 50-9-102, of, or the execution of a death penalty upon, the person while the person is incarcerated in the prison, jail, or other correctional facility because of conviction of a criminal offense. This subsection (2)(a) applies to a death caused by a terminal condition only if the person was under medical care at the time of death.

(b) while a person is being taken into custody or is in the custody of a peace officer or if the death is caused by a peace officer, except when criminal charges have been or will be filed.

(3) If an inquest is held, the proceedings are public. The coroner shall conduct the inquest with the

aid and assistance of the county attorney. The coroner shall, and the county attorney may, examine each witness, after which the witness may be examined by the jurors. The inquest must be held in accordance with this part.

(4) (a) A coroner who also serves as a peace officer may not conduct an inquest into the death of a person who:

(i) died in a ~~prison,~~ jail~~, or other correctional facility~~ operated by or under the jurisdiction of the peace officer;

(ii) died while in the custody of a peace officer serving in the same jurisdiction; or

(iii) was killed by a peace officer serving in the same jurisdiction.

(b) If a coroner is disqualified under subsection (4)(a), the county attorney shall request a qualified coroner or peace officer coroner of ~~a neighboring county~~ another jurisdiction to conduct the inquest. The expenses of a coroner fulfilling the request, including salary, must be paid by the requesting county."

NEW SECTION. **Section 2. Effective date.** [This act] is effective on passage and approval.

- END -

Senate Standing Committee Report

January 11, 2023

To the President,

We, your committee on **(S) Judiciary** report that **Senate Bill 19** (first reading copy – white) **Do Pass**.

Signed: _____

Sen. Keith Regier-R, Chair

-End-

Committee Vote:

Yes 8, No 3

Senate Standing Committee Report

January 11, 2023

To the President,

We, your committee on **(S) Judiciary** report that **Senate Joint Resolution 5** (first reading copy – white) **Do Pass**.

Signed: Keith Regier

Sen. Keith Regier-R, Chair

-End-

Committee Vote:

Yes 11, No 0

Senate Standing Committee Report

January 11, 2023

To the President,

We, your committee on **(S) Judiciary** report that **Senate Bill 38** (first reading copy – white) **Do Pass**.

Signed: Keith Regier

Sen. Keith Regier-R, Chair

-End-

Committee Vote:

Yes 7, No 4

Senate Standing Committee Report

January 11, 2023

To the President,

We, your committee on **(S) Judiciary** report that **Senate Bill 106** (first reading copy – white) **Do Pass**.

Signed: Keith Regier

Sen. Keith Regier-R, Chair

-End-

Committee Vote:

Yes 11, No 0

BILL TABLED NOTICE

Senate (S) Judiciary

The Senate (S) Judiciary TABLED

SB79-Revise laws relating to peace officer status- Sen. Ryan Lynch

by motion, on Wednesday January 11, 2023, (PLEASE USE THIS ACTION DATE IN LAWS BILL STATUS).

(For the Committee)

(For the Chief Clerk of the House)

12:00p 1/18
(time) (date)

January 18, 2023 (3:22 AM) Grace Gibney, Secretary

SENATE COMMITTEE ON (S) JUDICIARY
January 11, 2023
VOTE TABULATION - SB 12

Sen. Brown made a Motion that SB0012.001.001 Be Amended
YEAS – 3 NAYS - 8

N	Brown, Bob
N	Emrich, Daniel
N	Friedel, Chris
Y	Gross, Jen
N	Hinebauch, Steve
Y	Kelker, Kathy
N	Manzella, Theresa
N	Olsen, Andrea
N	Regier, Keith
N	Usher, Barry
Y	Webber, Susan; by proxy

SENATE COMMITTEE ON (S) JUDICIARY
January 11, 2023
VOTE TABULATION - SB 12

Sen. Regier made a Motion that SB 12 Do Pass
YEAS – 8 NAYS - 3

Y	Brown, Bob
Y	Emrich, Daniel
Y	Friedel, Chris
N	Gross, Jen
Y	Hinebauch, Steve
Y	Kelker, Kathy
Y	Manzella, Theresa
N	Olsen, Andrea
Y	Regier, Keith
Y	Usher, Barry
N	Webber, Susan; by proxy

SENATE COMMITTEE ON (S) JUDICIARY
January 11, 2023
VOTE TABULATION - SB 68

Sen. Brown made a Motion that SB0068.001.001 Do Pass as Amended
YEAS – 10 NAYS - 1

Y	Brown, Bob
Y	Emrich, Daniel
Y	Friedel, Chris
Y	Gross, Jen
Y	Hinebauch, Steve
Y	Kelker, Kathy
Y	Manzella, Theresa
N	Olsen, Andrea
Y	Regier, Keith
Y	Usher, Barry
Y	Webber, Susan; by proxy

SENATE COMMITTEE ON (S) JUDICIARY
January 11, 2023
VOTE TABULATION - SB 38

Sen. Brown made a Motion that SB 38 Do Pass
YEAS – 7 NAYS - 4

Y	Brown, Bob
Y	Emrich, Daniel
Y	Friedel, Chris
N	Gross, Jen
Y	Hinebauch, Steve
N	Kelker, Kathy
Y	Manzella, Theresa
N	Olsen, Andrea
Y	Regier, Keith
Y	Usher, Barry
N	Webber, Susan; by proxy

SENATE PROXY

I, Senator Susan A. Webber, hereby authorize Senator Gross to vote my proxy before the Senate Judiciary meeting held on 01/11/2023, 2023.

Senator Signature

01/11/2023
Date

Said authorization is as follows: *(mark only one)*

- ☑ All votes, including amendments.
- ☐ All votes as directed below on the listed bills, and all other votes.
- ☐ Votes only as directed below.

Bill No./Amendment No.	Aye	No
~~SB 12~~ - SB0012.001.001	✓	
SB 12		✓
SB19		✓
SB 38		✓
SB0068.001.001	✓	
SB 68	✓	
SB 79	✓	
SJ 5	✓	
SB 106	✓	

VISITORS REGISTER

MONTANA SENATE
JUDICIARY COMMITTEE

Date: January 11 Bill No: SB47

Sponsor: Sen. Theresa Manzella

(Insert Short Title)

Please print ~ Please print ~ Please print ~ Please print

NAME	REPRESENTING	Support	Oppose	Informat'l
David Smith	MT Contractors	✓		
Jim Quarles	Montana Tow Truck Ass	✓		
Brad Morten	MDT	✓		
Lauri Bakri	DOJ MVD			X
Duane Williams	MTA	+		
BRAD CONGDON	MPMCSA	X		
Duane James	MT Infrastructure Coalition	✓		
Bob Gilbert	MT Tow Truck A MT School Bus A.	✓		
Jason Todhunter	MLA	✓		

Please leave prepared testimony with Committee Secretary. Witness Statement Forms are available if you prefer to submit written testimony.

Additional Documents
SENATE: Judiciary
Date: 1/11/23
Bill No. SB47

OPPOSE SB 47

Chairman Regier and members of the Senate Judiciary Committee.

My name is Gordy Vance from Belgrade, MT. I am opposed to SB 47. This Bill died last session in the Senate Transportation Committee. The bill has many problems. First, is the negative impact on the farm and ranch industry. Prices of all products that are shipped by truck will continue to rise due to the cost placed on individual drivers. To comply with the federal requirement, it can cost a driver between $4,000 - $5000. It will have a huge impact on the local small freight companies. Finally, there is the fact that the federal government makes the threat that they may withhold federal funding if states don't fall in line and comply. This is not the only issue involving federal threats to withhold funding from MDOT. This is just one more example of the federal government using this tactic. I have been made aware of many more issues over time. Please vote to table SB47. The bill will have a tremendous negative impact on small businesses and consumers in Montana. Thank you for your consideration.

Gordy Vance
Former State Legislator 2009-2022
P.O. Box 1, Belgrade, MT 59714

Details:
Bill: SB-47: Revise commercial drivers license laws to comply with federal requirements 2023-01-11 09:00 AM - (S) Judiciary
Position: Proponent
Representing an Entity/Another Person: No
Organization: N/A
Name: Kyle Rickets
Email: rickketts.kr@gmail.com
Phone: (801) 633-5133
City, State: Salt Lake City, UT
Written Statement: Not Provided
Files:
Testify via Zoom: Yes
Zoom Method: Phone

MINUTES

MONTANA HOUSE OF REPRESENTATIVES

68th LEGISLATURE - REGULAR SESSION

COMMITTEE ON (H) JUDICIARY

Call to Order: Chair Amy Regier-R, on March 23, 2023 at 8:02 AM, in 137

ROLL CALL

Members Present:	Rep. Amy Regier, Chair (R) Rep. Brandon Ler, Vice Chair (R) Rep. Lee Deming (R) Rep. Tom France (D) Rep. Jedediah Hinkle (R) Rep. SJ Howell (D) Rep. Greg Kmetz (R) Rep. Casey Knudsen (R) Rep. Braxton Mitchell (R) Rep. Wayne Rusk (R) Rep. Lola Sheldon-Galloway (R) Rep. Zooey Zephyr (D)
Members Excused:	Rep. Kim Abbott (D) Rep. Laurie Bishop (D) Rep. Jennifer Carlson (R) Rep. Neil Duram (R) Rep. Jodee Etchart (R) Rep. Donavon Hawk (D) Rep. Caleb Hinkle (R) Rep. Laura Smith (D)
Staff Present:	Jamie Van Valkenburg, Secretary Rachel Weiss, Research Analyst

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:

Hearing & Date Posted:

SB 19 03/16/2023
SB 38 03/16/2023
SB 89 03/16/2023
SB 94 03/16/2023

SB 95 03/16/2023
SB 96 03/16/2023
SB 182 03/20/2023
SB 294 03/16/2023

Executive Action:

HEARING ON SB 294 - Establish the end of watch trust

Opening Statement:

08:03:07 Sen. Barry Usher (R), SD 40, opened the hearing on SB 294, Establish the end of watch trust.

Proponent Testimony:

08:09:30 Jillien Streit, Self

08:13:39 Lindsey Palmer, Self

08:15:49 Monica Allmendinger, Self

08:17:52 Jodi Moore, Self

08:20:16 Brian Heino, Flathead County Sheriffs Office

08:22:53 Steve Lavin, Department of Justice and Montana Highway Patrol

08:24:07 Leo Dutton, Sheriff of Lewis and Clark County

08:26:18 Tom Butler, Self

08:28:40 Dan Springer, Gallatin County Sheriff

08:30:30 John Colby, Blaine County Sheriff

08:32:24 Brandon Harris, Broadwater County Sheriff's Office

08:33:45 Karen Alley, Montana Association of Counties

08:34:28 Jessie Luther, Association of Montana Troopers

EXHIBIT(230323JUHa1)

08:36:33 Nanette Gilbertson, Montana Sheriffs and Peace Officers Association

08:39:09 Shelby DeMars, Montana Police Protective Association

08:41:17 Steve Cape, Coalition of Safety and Justice

08:42:46 Scott Cope, Red Lodge Police Department

08:43:56 Rep. Laura Smith joined the meeting.

08:44:55 Thomas Jodoin, Montana League of Cities and Towns

Informational Witness Testimony:

None

Opponent Testimony:

None

Questions from Committee:

08:46:06 Rep. Jedediah Hinkle

08:49:37 Sen. Barry Usher-R

Closing Statement:

08:49:56 Sen. Barry Usher (R), SD 40, closed the hearing on SB 294.

HEARING ON SB 95 - Generally revise theft laws

Opening Statement:

08:56:21 Sen. Barry Usher (R), SD 40, opened the hearing on SB 95, Generally revise theft laws.

Proponent Testimony:

08:59:03 Scott Twito, Yellowstone County Attorney

09:01:24 Brad Griffin, Montana Retail Association

09:05:16 Ronda Wiggers, National Federation of Independent Businesses

09:06:28 Nanette Gilbertson, Montana Sheriffs and Peace Officers Association

09:07:08 Steven Haddon, Jefferson County Attorney

09:07:46 Alex Sterhan, Department of Justice

09:08:17 Dan Smith, Montana Police Protective Association

09:08:37 Charles Robson, Chamber of Commerce

09:08:54 Dan Brooks, Billings Chamber of Commerce

09:10:02 Pam Purinton, Billings City Council

Opponent Testimony:

09:11:01 Maggie Bornstein, American Civil Liberties Union of Montana and Montana Women Vote

EXHIBIT(230323JUHa2)

09:14:23 Jade Bahr, Montana Budget and Policy Center

09:15:23 Hannah Pate, Montana Women Vote

09:17:06 Benjamin Lacayo, Self

Informational Witness Testimony:

09:19:37 Brett SChandelson, Office of the Public Defender

Questions from Committee:

09:20:37 Rep. Laura Smith

09:40:53 Rep. Jennifer Carlson joined the meeting.

09:45:11 Scott Twito

Closing Statement:

09:46:14 Sen. Barry Usher (R), SD 40, closed the hearing on SB 95.

Discussion:

EXHIBIT(230323JUHa4)

EXHIBIT(230323JUHa5)

HEARING ON SB 96 - Create separate definition for persistent felony offender under supervision

Opening Statement:

09:52:51 Sen. Barry Usher (R), SD 40, opened the hearing on SB 96, Create separate definition for persistent felony offender under supervision.

Proponent Testimony:

09:54:19 Scott Twito, Yellowstone County Attorney Office

EXHIBIT(230323JUHa3)

09:57:48 Dan Smith, Montana Police Protective Association

09:58:31 Nanette Gilbertson, Montana Sheriffs and Peace Officers Association

09:59:21 Steven Haddon, Montana County Attorney's Association

10:00:21 Steve Cape, Coalition of Safety and Justice

10:02:02 Pam Purinton, Billing City Council

Opponent Testimony:

10:03:05 Maggie Bornstein, American Civil Liberties Union of Montana, and Montana Women Vote

10:04:25 Benjamin Lacayo, Self

Informational Witness Testimony:

10:06:33 Brett Schandelson, Office of the Public Defender

Questions from Committee:

10:07:08 Rep. Laura Smith

10:11:26 Sen. Barry Usher-R

Closing Statement:

10:11:55 Sen. Barry Usher (R), SD 40, closed the hearing on SB 96.

HEARING ON SB 94 - Generally revise laws related to recovery residences

Opening Statement:

10:12:39 Sen. Barry Usher (R), SD 40, opened the hearing on SB 94, Generally revise laws related to recovery residences.

Proponent Testimony:

10:15:55 Scott Twito, Yellowstone County Attorney Office

10:17:22 Rebecca deCamera, Department of Health and Human Services

10:18:17 Steven Haddon, Montana County Attorney Association

10:19:52 Scot Eichner, Department of Labor and Industry

10:20:15 Steven Ferguson, Cross Winds Recovery

10:21:56 Dan Brooks, Billings Chamber of Commerce

10:23:24 Pam Purinton, Billings City Council

10:25:39 Terri Todd, Ignatia's House

Opponent Testimony:

10:28:54 Steve Cape, Coalition of Safety and Justice

10:31:53 Paul McElroy, Mountain Family Fellowship Church

10:33:55 Steve Allen, Mountain Family Fellowship Church

10:37:12 Carolyn Belling, Hope Center Ministries

10:39:46 Tiffany Stone, Hope Center Ministries

10:41:44 Robin Homan, Hope Center Ministries

10:44:30 Lauren Montoya, Hope Center Ministries

10:47:41 Taylor Seal, Hope Center Ministries

10:49:36 Sharon Nason, Hope Center Ministries

10:52:34 Shirely Felsman, Self

10:54:27 Faith Kuahiwiniui, Self

10:55:55 Angel Small, Self

10:58:00 Pam Forsman, Self

10:58:28 Jolene Kuser, Self

11:00:54 Joan Rada, Elkhorn Treatment Center, Hope Center Ministries

11:03:45 Brooke Pickett, Self

11:06:49 Matt Elsaesser, Self

11:07:02 Tom Rassmasan, Self

11:10:00 Donna Elford, Self

11:11:48 Dave Clark, Different Choices

11:15:16 Seneca Wiley, Self

11:16:33 Michael Drewry, Sober Beginnings

11:17:41 Kacey Keith, Self

11:20:15 Josh Butterfly, Prayer Warriors Tribal Council

11:22:44 Lance FourStar, American Indian Caucus

11:24:49 Chelsey Culpon, Self

Informational Witness Testimony:

None

Questions from Committee:

11:27:41 Rep. Laura Smith

11:44:48 Sen. Barry Usher-R

Closing Statement:

11:45:07 Sen. Barry Usher (R), SD 40, closed the hearing on SB 94.

HEARING ON SB 38 - Generally revise sex offender level designations

Opening Statement:

11:48:00 Sen. Bob Brown (R), SD 7, opened the hearing on SB 38, Generally revise sex offender level designations.

Proponent Testimony:

11:49:08 Dan Smith, Montana Police Protective Association

11:49:31 Alan Doane, Montana Department of Justice

11:49:49 Suzanne Anders, Montana Sex and Violence Registry

11:50:55 Nanette Gilbertson, Montana Sheriffs and Peace Officers Association

11:51:16 Ann Dormady, Montana Department of Justice

Opponent Testimony:

11:51:56 Maggie Bornstein, American Civil Liberties Union of Montana

Informational Witness Testimony:

11:53:54 Brett Schandelson, Office of the Public Defender

Questions from Committee:

11:54:18 Rep. Tom France

12:00:39 Sen. Bob Brown-R

Closing Statement:

12:01:47 Sen. Bob Brown (R), SD 7, closed the hearing on SB 38.

HEARING ON SB 89 - Create pretrial diversion pilot program

Opening Statement:

12:03:53 Sen. Ryan Lynch (D), SD 76, opened the hearing on SB 89, Create pretrial diversion pilot program.

Proponent Testimony:

12:05:16 Scott Twito, Yellowstone County Attorney's Office

12:06:39 Steven Haddon, Jefferson County Attorney

12:07:49 Nanette Gilbertson, Montana County Attorney Association

12:09:05 Henry Kiegel, Americans For Prosperity

Opponent Testimony:

None

Informational Witness Testimony:

12:10:22 Brett Schandelson, Office of the Public Defender

Closing Statement:

12:10:39 Sen. Ryan Lynch (D), SD 76, closed the hearing on SB 89.

HEARING ON SB 182 - Create task force on a court system for dependency and neglect cases

Opening Statement:

12:11:07 Sen. Dennis Lenz (R), SD 53, opened the hearing on SB 182, Create task force on a court system for dependency and neglect cases.

Proponent Testimony:

12:13:34 Nanette Gilbertson, Montana County Attorney's Association

12:15:21 April Barnings, Montana Casa

12:16:02 Pam Purinton, Self

Opponent Testimony:

None

Informational Witness Testimony:

12:18:50 Nikki Grossberg, Child and Family Services

Questions from Committee:

12:19:19 Vice Chair Laurie Bishop

12:20:44 Nanette Gilbertson

Closing Statement:

12:21:08 Sen. Dennis Lenz (R), SD 53, closed the hearing on SB 182.

HEARING ON SB 19 - Generally revise disorderly conduct sentencing laws

Opening Statement:

12:25:04 Sen. Keith Regier (R), SD 3, opened the hearing on SB 19, Generally revise disorderly conduct sentencing laws.

Proponent Testimony:

12:25:08 Scott Twito, Montana County Attorney Association

12:26:27 Dan Smith, Montana Police Protective Association

12:27:18 Nanette Gilbertson, Montana Sheriffs and Peace Officers Association

12:29:02 Josh Butterfly, Self

Opponent Testimony:

12:30:51 Maggie Bornstein, American Civil Liberties Union Of Montana

12:32:04 Nicole Gomez, Montana Women Vote

12:34:09 Jade Bahr, Montana Budget and Policy Center

12:35:59 Benjamin Lacayo, Self

Informational Witness Testimony:

12:38:06 Brett Schandelson, Office of the Public Defender

Questions from Committee:

12:38:35 Rep. Donavon Hawk

12:46:42 Scott Twito

Closing Statement:

12:51:04 Sen. Keith Regier (R), SD 3, closed the hearing on SB 19.

ADJOURNMENT

Adjournment: 12:52:07

Jamie Van Valkenburg, Secretary

Additional Documents:EXHIBIT(230323JUHaad)

Montana State Legislature

2023 Session

Additional House Documents

- Business Report
- Roll Call -Attendance
- Standing Committee Reports
- Tabled Bills
- Fiscal Reports [if any]
- Roll Call Votes
- Proxies signed in ink
- Visitor's sign-in sheet.
- Informational Item's
- Witness Statements if any,
- Zoom/Internet Testimony Information & index
- Any other type of documents such as:
  @ Petitions, {if any} Emails, all documents given to Committee Secretary before & after meeting.
- Public Testimony documents may or may not be scanned, they will be on file at the Montana Historical Society.
- Disclaimer: within the online minutes document you will see vacate spaces within the document. The LAWS II system creates these blank areas they are not loss of information.

The original exhibit/items are on file at the Montana Historical Society and may be viewed there.

Montana Historical Society Archives,
225 N. Roberts, Helena, MT 59620-1201
E-Document Specialist Susie Hamilton

BUSINESS REPORT

MONTANA HOUSE

REGULAR

(H) Judiciary

Date: 03/23/2023 **Time:** 8:00 AM

Place: Capitol **Room:** 137

BILLS and RESOLUTIONS HEARD:

SB 182 Create task force on a court system for dependency and neglect cases - Sen. Dennis Lenz

SB 19 Generally revise disorderly conduct sentencing laws - Sen. Keith Regier

SB 294 Establish the end of watch trust - Sen. Barry Usher

SB 38 Generally revise sex offender level designations - Sen. Bob Brown

SB 89 Create pretrial diversion pilot program - Sen. Ryan Lynch

SB 94 Generally revise laws related to recovery residences - Sen. Barry Usher

SB 95 Generally revise theft laws - Sen. Barry Usher

SB 96 Create separate definition for persistent felony offender under supervision - Sen. Barry Usher

EXECUTIVE ACTION TAKEN:

Comments:

Amy Regier

Rep. Amy Regier-R, Chair

House

Roll Call

(H) Judiciary

DATE: 03/23/2023
TIME: 8:00 AM

NAME	PRESENT	ABSENT/EXCUSED
Ler, Brandon	X	
Bishop, Laurie		X
Mitchell, Braxton	X	
Sheldon-Galloway, Lola	X	
Smith, Laura		X
Deming, Lee	X	
Knudsen, Casey	X	
France, Tom	X	
Carlson, Jennifer		X
Howell, SJ	X	
Hinkle, Caleb		X
Duram, Neil		X
Hawk, Donavon		X
Zephyr, Zooey	X	
Kmetz, Greg	X	
Etchart, Jodee		X
Hinkle, Jedediah	X	
Rusk, Wayne	X	
Abbott, Kim		X
Regier, Amy	X	

WITNESS STATEMENT

~~Madame~~ Mr. Chair, members of the Committee, my name is Joan Rada, R-A-D-A. and I oppose SB94. I am a volunteer for Hope Center Ministries and ETC.

I am privileged to serve as a volunteer at Elkhorn Treatment Center. ETC, is drug rebab center operated by Boyd Andrews for DOC. It serves female offenders struggling with addiction. For the last 15 years I travel to Boulder Monday nights and run their Celebrate Recovery Program.

In addition to ETC I serve as a volunteer to Hope Center Ministries. I ran Hope Center's Celebrate Recovery for a year and at the present time do 5th steps. Hope Center Ministries is a Christian-based and 12-step recovery program for alcohol and substance abuse.

In 2010, my step-daughter completed a 30- day treatment program for opioid addiction at a traditional treatment center. Her treatment cost was $28,000. She relapsed and died of a fentanyl overdose. Her loss devastated our family.

After this loss, my granddaughter, a US Navy veteran became addicted to meth and herion. She completed a 45- day treatment program at the VA and maintained sobriety for a short time before relapsing. She was living on the street in July 2020 when she was accepted into Hope Center Ministries in Clancy, Mt, the cost was $700. She was one of the Centers first residents and first graduate. She has been sober for 2 ½ years. Her life is completely turned around.

Hope Center accepts people from all walks of life, including those living on the street with NO hope, NO help or NO resources to change their life. Staff ~~also~~ encourages all residents to build a relationship with Jesus, who can and will help them on their road to recovery.

I have seen addicts helped at ETC and I've seen addicts rescued by the Hope Center. Every addict and addiction is different. ONE SIZE SHOE DOESN'T FIT ALL!

The practical effect of this bill is to limit options and to prevent addicts like my granddaughter from receiving help to overcome addiction. Without Hope Center my granddaughter would have died.

I urge you to vote no on Senate Bill 94.

03/23/23 JUH ONLINE TESTIMONY LIST					
SB	94	Proponent	Dan Brooks	Billings, MT	Billings Chamber of Commerce
SB	94	Proponent	Pam Purinton	Billings, MT	Billings City Council
SB	94	Opponent	Chelsea Culpon	Helena MT	NA
SB	94	Opponent	Matthew Elsaesser	Helena, MT	NA
SB	94	Informational	Kelly C. McArthur	Billings Montana	NA
SB	95	Proponent	Dan Brooks	Billings, MT	Billings Chamber of Commerce
SB	95	Proponent	Pam Purinton	Billings, MT	Billings City Council
SB	95	Opponent	Hannah Pate	Great Falls, MT	Montana Women Vote
SB	95	Opponent	Benjamin A Lacayo	Missoula. MT	NA
SB	95	Informational	Brett Schandelson	Missoula. MT	OPD
SB	96	Proponent	Pam Purinton	Billings, MT	Billings City Council
SB	96	Opponent	Benjamin A Lacayo	Missoula. MT	NA
SB	96	Informational	Brett Schandelson	Missoula. MT	OPD
SB	182	Proponent	April Barnings	Missoula. MT	Montana CASA/GAL Association
SB	182	Proponent	Pam Purinton	Billings, MT	Billings City Council
SB	19	Opponent	Benjamin A Lacayo	Missoula. MT	NA
SB	19	Informational	Brett Schandelson	Missoula. MT	OPD
SB	38	Informational	Brett Schandelson	Missoula. MT	OPD
SB	89	Informational	Brett Schandelson	Missoula. MT	OPD
HB	479	Informational	Nate Thomas	Helena, MT	Department of Justice
SB	294	Proponent	Scott Cope	Red Lodge, MT	NA
SB	294	Proponent	Thomas J. Jodoin	Helena, MT	Montana League of Cities and Towns

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

1

VISITOR REGISTER

JUDICIARY COMMITTEE

DATE 3/23 BILL NO: SB 294

SPONSOR(S): Sen Usher

SHORT TITLE: _____

Please leave prepared testimony with the clerk.
Witness Statement forms are available if you care to submit written testimony.

PLEASE PRINT PLEASE PRINT PLEASE PRINT PLEASE PRINT

Name	Representing	Support	Oppose	Informt'l
Jessie Luther	AMT	X		
Brandon Harris	Broadwater Co. Sheriff	X		
Jillien Streit	Trooper Johnson Family	X		
Brian Heino	Flathead County S.O.	X		
John Colby	Blaine County SO	X		
Monica Allmendinger	myself	X		
Steve Lavin	DOJ/MHP	X		
Jodi Moore	myself	X		
Dan Springer	Gallatin Co. Sheriff's	X		
Leo Dutton	Lewis & Clark Co SO	X		
Ruth Rater	self	X		
Karen Alley	MAA	X		
~~Nanette Gilbertson~~	MSPOA	✓		

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

2

VISITOR REGISTER

JUDICIARY COMMITTEE

DATE 3/23 BILL NO: SB95

SPONSOR(S): Sen Usher

SHORT TITLE: _____

Please leave prepared testimony with the clerk.
Witness Statement forms are available if you care to submit written testimony.

PLEASE PRINT PLEASE PRINT PLEASE PRINT PLEASE PRINT

Name	Representing	Support	Oppose	Informt'l
Steven Haddon	MCAA	—		
Maggie Bernstein	ACLU-MT		X	
Charles Robison	mt Chamber	✓		
Henry Kriegel	AFP MT	X		
Stan Capp	MTC&I		X	
Brad Griffin	MT Retail Assoc	X		
Scott Twito	YLAD/MCAA/CJOC	X		
Linda Kilgore	NFIB			
Allen Stephan	MT DOT	&		
Jade Bahr	MSBPC		X	
Nanette Giberton	MSPOA	✓		

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

4

VISITOR REGISTER

JUDICIARY COMMITTEE

DATE 3/23 BILL NO: SB 94

SPONSOR(S): Sen Usher

SHORT TITLE: _____

Please leave prepared testimony with the clerk.
Witness Statement forms are available if you care to submit written testimony.

Paul McKlroy PLEASE PRINT | Donna Elford PLEASE PRINT | Self PLEASE PRINT | PLEASE PRINT

Name	Representing	Support	Oppose	Informt'l
Jo Lynn Kuser	Hope Center - a parent		✓	
Rebecca deCamara	DPHHS	✓		
Steve Allen	Mountain Family Fellowship		✓	
Sharon Mason	Self		✓	
Pam Tasman	Self / Hope Center		✓	
Brooke Pickett	Self - Hope Center		✓	
Robin Hopman	Self - Hope Center		✓	
Steven A. Haddon	MCAT	✓		
Scott Etchner	DOC	✓		
Joan M Roda	ETC - Hope Center Volunteer		✓	
Isaac D. Lutz	ETC - HOPE CENTER		✓	
Tracy Reith	Sober Beginnings		✓	
Mike Drewry	Sober Beginnings		✓	
Seneca Wiley	Sober Beginnings		✓	
Faith Kuahiniinui	Hope Center - Self		✓	
Shirley Felsman	Hope Center		✓	
Taylor Rae Seal	Hope Center		✓	
Angel Small	Hope Center		✓	
Todd Capp	MTCHSJ		✓	
Dr. Tom Rasmusson	Self		✓	

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

VISITOR REGISTER

JUDICIARY COMMITTEE

DATE_____ BILL NO: 94

SPONSOR(S): _____

SHORT TITLE: _____

Please leave prepared testimony with the clerk.
Witness Statement forms are available if you care to submit written testimony.

PLEASE PRINT PLEASE PRINT PLEASE PRINT PLEASE PRINT

Name	Representing	Support	Oppose	Informt'l
Scott Twito	YCAO / CJDC	X		
Ruth Rater	Self		X	
Matt Elsaesser	Self		X	
Stephen Ferguson	Crosswinds Recovery	X		
Dave Clark	Different Choices		X	

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

3

✓

VISITOR REGISTER

JUDICIARY COMMITTEE

DATE 3/23 BILL NO: SB96

SPONSOR(S): Sen Usher

SHORT TITLE: _____

Please leave prepared testimony with the clerk.
Witness Statement forms are available if you care to submit written testimony.

PLEASE PRINT PLEASE PRINT PLEASE PRINT PLEASE PRINT

Name	Representing	Support	Oppose	Informt'l
Steven Haddon	MCAA	✓		
Maggie Bornstein	ACLU-MT		X	
Steve Cape	MCGA		X	
Scott Twito	YCAO / MCAA / CJOC	✓		
Nanette Gilbertson	MSPOA	✓		

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

5

VISITOR REGISTER

JUDICIARY COMMITTEE

DATE 3/23 BILL NO: SB 38

SPONSOR(S): Sen Brown

SHORT TITLE: _____

Please leave prepared testimony with the clerk.
Witness Statement forms are available if you care to submit written testimony.

PLEASE PRINT PLEASE PRINT PLEASE PRINT PLEASE PRINT

Name	Representing	Support	Oppose	Informt'l
Suzanne Anders	MT DOJ DCI	✓		
Maggie Bornstein	ACLU-MT		X	
Anne Dormady	DOJ - DCI	✓		
Alan Domke	DOJ	X		
Nanette Gilbertson	MSPOA	✓		

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

VISITOR REGISTER

JUDICIARY COMMITTEE

DATE 3/23 BILL NO: SB 89

SPONSOR(S): Sen Lynch

SHORT TITLE: _____

Please leave prepared testimony with the clerk.
Witness Statement forms are available if you care to submit written testimony.

PLEASE PRINT PLEASE PRINT PLEASE PRINT PLEASE PRINT

Name	Representing	Support	Oppose	Informt'l
Steven Haddon	MCAA	✓		
Henry Kriegen	AFBTJ	✓		
Scott Twito	MCAA / CJOC	✓		
Nanette Gilbertson	~~MCAA~~ MSPOA	✓		

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

VISITOR REGISTER

JUDICIARY COMMITTEE

DATE 3/23 BILL NO: SB182

SPONSOR(S): Sen Lenz

SHORT TITLE: _____

Please leave prepared testimony with the clerk.
Witness Statement forms are available if you care to submit written testimony.

PLEASE PRINT PLEASE PRINT PLEASE PRINT PLEASE PRINT

Name	Representing	Support	Oppose	Informt'l
Nikka Grossberg	CFSD			✓
Nanette Gilbertson	MCAA	✓		

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

VISITOR REGISTER

JUDICIARY COMMITTEE

DATE 3/23 BILL NO: HB479

SPONSOR(S): Rep Read

SHORT TITLE: _____

Please leave prepared testimony with the clerk.
Witness Statement forms are available if you care to submit written testimony.

PLEASE PRINT PLEASE PRINT PLEASE PRINT PLEASE PRINT

Name	Representing	Support	Oppose	Informt'l
Bree Decker	Lake County	X		
Patrick Yawakie	Blackfeet		X	
Scott Perchvin	Lake County	—		

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

VISITOR REGISTER

JUDICIARY COMMITTEE

DATE 3/23 BILL NO: SB19

SPONSOR(S): Sen K. Regier

SHORT TITLE: _____

Please leave prepared testimony with the clerk.
Witness Statement forms are available if you care to submit written testimony.

PLEASE PRINT PLEASE PRINT PLEASE PRINT PLEASE PRINT

Name	Representing	Support	Oppose	Informt'l
Steven Haddon	MCAA	✓		
Maggie Bornstein	ACLU-MT		X	
SCOTT TWITO	MCAA/CJOC	✓		
Jade Bahr	MBPC		X	
Nicole Gomez	Montana Women Vote		X	
Nanette Gilbertson	MSPOA	✓		

ADDITIONAL DOCUMENTS

ANALYSIS

What the Panic Over Shoplifting Reveals About American Crime Policy

Lawmakers consider bills to crack down on people ripping off retailers, even as some stores walk back claims about a growing theft problem.

02.27.2023

By NICOLE LEWIS
Additional reporting by LAKEIDRA CHAVIS

During an appearance last year on the morning show, "Fox and Friends," a former chief executive of Home Depot described a rise in shoplifting in dire terms. "Today, this thing is an epidemic," he said. "It's spreading faster than COVID." The executive joined a long list of industry leaders, from

Walmart to Walgreens, encouraging police and prosecutors to crack down on theft. Retailers say they'll be forced to raise prices or shutter affected stores without help to address a growing threat — organized bands of shoplifters ransacking stores with the intent to resell the looted merchandise.

This article was published in partnership with Slate.

In a handful of states, lawmakers have reacted swiftly. Last year, legislators in California, Florida, Louisiana and North Carolina stiffened penalties for stealing from stores, adding language to target people who act in concert or rob multiple outlets. Under a law amended in Louisiana, for example, anyone caught stealing as part of a group could now face up to seven years in prison.

Retail lobbyists say this kind of theft is a problem for stores large and small in every state. But it's unclear how much worse retail theft has become. National statistics are unreliable. Nearly 40% of law enforcement agencies did not report their most recent crime data to the FBI, The Marshall Project reported in June. Even if they had, most police departments do not have a separate category to distinguish retail theft from other kinds of robberies and larceny.

And yet, lawmakers in at least 11 states are considering legislation that would more harshly punish people caught stealing from stores with the intent to resell merchandise.

The panic over retail theft offers a real-time look at the making of American crime policy. In the absence of reliable data, and in response to perceptions of lawlessness, legislators have doubled down on punitive policies. Many have even created a new category of retail crime in response to the industry's concerns. In some states, elected officials have capitalized on the shoplifting uproar in an attempt to roll back recently enacted criminal justice reforms.

Critics of the legislative response say that decades of research on crime deterrence makes clear that a harsher approach won't have the desired effect, and will exacerbate the system's racial disparities.

"It's like the '90s all over again, except we have 30 years of evidence that all of that punitiveness doesn't get us anything," said Laura Bennett, director of the Center for Just Journalism, a non-profit dedicated to improving journalistic coverage of critical public safety issues. "But people are still knee-jerk responding with the same tired ideas that we know don't work."

To make their case about rising crime, industry leaders have mainly relied on figures from an annual survey conducted by the National Retail Federation, one of the largest retail trade associations in the country. The federation estimates that stolen merchandise cost retailers $94

billion in 2021, up from $90 billion the year before. Another lobbying group, the Retail Industry Leaders Association, set the number at $69 billion a year.

The increase is not necessarily a sign of a worsening problem. Steep inflation has upped the price of goods, while the federation's survey shows that the amount of merchandise disappearing from shelves remained stable between 2016 and 2021. External theft only represented a portion of overall losses, the survey shows. The largest share, roughly two-thirds of missing merchandise, is a result of employee theft, process failures and unknown sources.

Still, the retail federation wants law enforcement's help. Part of the issue, they argue, is that the people orchestrating retail crimes are sophisticated, tailoring their tactics to recent criminal justice reforms. Changes to bail policies make it easier to entice people to steal, the federation argues, because they won't spend time in jail before trial should they get caught. The lobbyists also fear that increasing the value of goods someone must steal before triggering a felony charge — a common reform — similarly encourages thefts.

Online marketplaces such as Amazon and Facebook Marketplace have enlarged the market for stolen goods. Criminal enterprises recruit people to steal from stores in exchange for drugs or a small payment. These "boosters" may steal items from multiple stores across state lines. And in recent years, retailers say the episodes are becoming more violent and chaotic.

"Right now this type of crime pays, and it pays well to the people who are orchestrating it," said Jason Straczewski, vice president of government relations and political affairs for the National Retail Federation. "It's in every community everywhere, and people are fed up. So it's up to our elected officials to set an appropriate penalty for it, and the penalties must be greater than the profits being made from the crime."

Industry groups have seized on cities like San Francisco and New York City as epicenters of theft. Available data does not support a shoplifting explosion in San Francisco, but shoplifting complaints to the police in New York have surpassed pre-pandemic levels for the last two years. Both cities enacted policies that lobbyists — and some lawmakers — say exacerbate the problem. In San Francisco, industry executives point to a 2014 ballot measure that reclassified nonviolent thefts as misdemeanors for goods valued at less than $950. In New York City, some lawmakers have tied the shoplifting uptick to a 2019 bail reform measure that encouraged judges to use the "least restrictive" means to compel people to return to court. Lawmakers in New York have rolled back some bail provisions, making it easier for judges to hold people in jail.

"What we can't do is allow repeated offenders to make a mockery of our criminal justice system, and repeatedly, we are losing chain stores that are closing down," said New York Mayor Eric Adams in response to a question about organized retail crime during a recent budget hearing in Albany.

The rhetoric linking shoplifting with reform measures is out of sync with the research. An analysis of arrest data in New York shows few people committed new crimes while out on bail. And crime-deterrence research demonstrates that harsher penalties do little to prevent crime. Instead, people are much more likely to respond if they feel there's a high likelihood of getting caught and swiftly punished.

"This is not a contested finding in the field of criminology," said Jake Horowitz, director of Pew Charitable Trusts' safety and justice research. "Even a severe sanction like a potential felony, in which you'll spend more than a year in prison, is not an effective deterrent."

A 2018 report from Pew bears this out. Since 2000, at least 39 states have increased the value of stolen goods required to trigger a felony charge. States that increased their thresholds experienced the same overall decline in property crimes over the last two decades as states that did not, the analysts found.

The main focus, retail lobbyists say, needs to be on punishing the masterminds behind the crime rings who exploit the shoplifters. To do this, the federation encourages lawmakers to enact statutes that create a new category of crime: organized retail theft. The industry defines organized theft as anyone shoplifting for personal gain versus personal use. To date, the federation says it has helped enact such laws in 34 states.

"We want to go after the heads of the snake," said David Johnston, the federation's vice president of asset protection & retail operations. "We want to go after the people who are orchestrating and taking advantage of these folks who serve as boosters."

These laws vary widely from state to state. In Georgia, for example, anyone who "intentionally organizes, plans, finances, directs, manages or supervises" one or more people to steal from a store could be charged with organized retail theft. Delaware's statute is broader, focusing on stealing in "quantities that would not normally be purchased for personal use or consumption." Typically, organized theft carries a harsher penalty than petty shoplifting.

Retail lobbyists argue that organized theft statutes give law enforcement a much-needed tool to combat the crime surge. But how the statutes are used is up to the discretion of police and

prosecutors. Critics of the approach caution that such discretion often exacerbates racial disparities in the criminal justice system.

That's what happened after Texas introduced an organized retail crime statute in 2007. Lawmakers defined the crime in such broad terms that any shoplifting could qualify as organized. A few years later, the legislature increased the penalties for organized theft and removed a provision that set the minimum value of stolen goods at $1,500. Now, law enforcement officers had a choice. Anyone caught stealing up to $1,500 of merchandise could either face a typical property theft charge or an organized theft charge, which carries a steeper penalty.

Michael Braun, a statistician at Cox School of Business at Southern Methodist University in Dallas, analyzed several years of arrest data for property crime and organized retail theft. He estimates that Black people were arrested and charged with organized retail theft more than twice as often as their White peers. Hispanic people faced the steeper charge 20% more often than White people. The more affluent the city, the higher the disparity.

"If the store was on one side of the city line, it might be handled one way. And if the store just happens to be on the other side of the city line, it could be treated completely differently," Braun said. "When there is ambiguity in the law, the police have a lot of discretion at the moment of arrest before a case even touches a prosecutor's desk."

Amending criminal codes is not easy — even in the face of compelling evidence of harm. After Braun published his findings, he testified before state legislators, offering a new definition of organized theft that would prevent law enforcement from using the statute against petty shoplifters. The proposal never made it to a floor hearing.

Some industry executives who had howled about widespread shoplifting are starting to spin a new narrative. Walgreens attempted to use out-of-control shoplifting as the reason behind its decision to close five stores in San Francisco in 2021. During a shareholder call last month, a Walgreens executive suggested that the pharmacy "cried too much last year," about how many products were disappearing from its shelves.

Walgreens executives still want law enforcement's help, even as they walk back their claims. James Kehoe, Walgreen's chief financial officer, told shareholders that the company's investment into private security in response to shoplifting hasn't paid off.

Now, Kehoe said, the company wants to try a new tactic: "More law enforcement, as opposed to security companies."

ADDITIONAL DOCUMENTS

HOPE CENTER
MINISTRIES

A CHRIST-CENTERED ADDICTION RECOVERY PROGRAM

HC

OUR MISSION

Hope Center Ministries exists to lead addicts and their families to become fully devoted followers of Christ

Our Core Values

We do everything for the good of the resident.
The greatest of all, is the servant of all.

We do the right thing even when no one is looking.
God honors integrity and character matters.

We have fun, laugh hard, and embrace adventure.
Discover the fun in recovery.

We develop new leaders to expand into new cities, states, and nations.
What you do isn't nearly as important as who you develop.

We always bring our best.
Excellence honors God and inspires people.

We are stronger together.
Brotherhood, sisterhood, community, unity.

HC

2022 Celebrations

974 RESIDENTS

1,015 BAPTISMS

366 GRADUATES

112 EMPLOYEES

1,256 RECOVERY VOLUNTEERS

14% DEPARTURE RATE

817 FAMILY MEMBERS ATTENDING WEEKLY

9 NEW CENTERS

Hohenwald, TN (Women's)
Dickson, TN (Women's)
Parkersburg, WV
Wytheville, VA
Wheeling, WV
Rickman, TN
Sulphur, OK
Temple, TX
Miami, FL

41 TOTAL CENTERS

Our Accreditation

To ensure that all residents are given the highest level of support, every year all HCM locations in the United States go through a series of evaluations & reviews to assure that each location is in compliance with the board-approved Hope Center Ministries National Standards.

The evaluations include on-site visits, data collection and assessment, and tracking of measurable goals to assure each home meets our high standard of excellence.

The 7 Core Accreditations standards of HCM are:

1. Facilities
2. Risk Management
3. Recovery
4. Financial Stewardship
5. Resident Care
6. Family Support
7. Volunteer Training

HC

Our Story

Over nineteen years ago, Josh Hannah heard the call of God to "Start a Hope Center." He had the heart to see his friends who were on a path of destruction come to the same radical, life-altering freedom in Christ he had experienced. In fact, his best friend, who was the first resident of Hope Center, still works with Hope Center today. Just like Josh's best friend, the residents we serve are someone's best friend, someone's family member, or someone's loved one.

It started with a vision from God to one man. Now, over one hundred employees and over twelve hundred volunteers are on the team of Hope Center Ministries, as we snatch as many people as possible from hell and from the grips of addiction. It's never just been about recovery; it's about rescuing the lost from destruction.

Not only is Hope Center a thriving ministry seeing lives changed; we are a growing ministry, where we get to build new things, go into new places, and take new territory for Christ to ultimately see more lives changed. With dozens of baptisms happening at each location, we get to witness what the early church witnessed in Acts 2:42-47 as "the Lord added to their number daily those who were being saved."

Today at Hope Center Ministries we have

- Over one thousand U.S. Residents
- 39 U.S. Locations
- 9 New Locations added in 2022
- Locations in 13 States
- Over 1600 Graduates
- 115 Employees

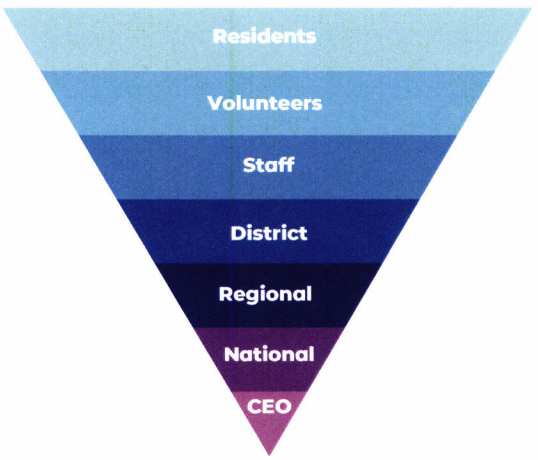
We were founded in 2007 in Waverly, TN and we are a 501(c)(3) non-profit organization

Our Structure

The Hope Center Ministries Organizational Chart flows as follows:

- Board of Directors
- President & CEO
- National Leadership
- Regional Leadership
- District Leadership
- Center Leadership
- Volunteer Leadership
- Dream Team

Everything stated above is the traditional, typical organizational flow chart. At Hope Center, we are traditional in rules and order; however, we realize the only reason we exist is for the resident. We are here for the residents. They are not here to serve us, but we are here to serve them. They are the priority. We also know we can't do what we do without the volunteers, location staff, and others. Based on this, our culture is built around the inverted pyramid, where we want ideas and feedback to flow from the "bottom" of the organizational chart to the "top". We are passionate about welcoming input from and engaging all levels of the organization. We want to receive innovation, ideas, and feedback from those we serve.



WITNESS
STATEMENT

March 23, 2023

Madame Chair and Members of the Committee,

Thank you for hearing testimony today from Hope Center Ministries on SB94. As requested here are the reasons, as written, this bill threatens to eliminate our program and all transitional programs.

1.) **Section 2 – Recovery Residence Requirements. (1) A recovery residence must register with the Department of Public Health and Human Services.**
    - DPHHS Registration Requirements are broad and undefined. Without clearly defined requirements, HCM cannot know if our faith-based discipleship program will be allowed to exist under the State requirements.

2.) **Section 2 (7) – The Recovery Residence may not limit a resident's duration of stay to an arbitrary or fixed amount of time. Each resident's duration of stay is determined by the resident's needs, progress, and willingness to abide by the recovery residence's protocols in collaborations with the recovery residence's owner and operator and, if appropriate, in consultation with a qualified health care provider.**
    - HCM's Recovery Support Program is designed as transitional housing, split into three phases, focusing on preparing residents to re-enter the community and therefore limits each resident's length of stay to 1 year. We would not be able to continue to exist if all residents were allowed to stay indefinitely.

3.) **Section 4. Powers and Duties of Department of Public Health and Human services.**
(B) The population served by the Recovery Residence; and
(C) Other information the county considers pertinent.
    - Many of our residents are admitted to our program to find shelter from an unsafe situation. Disclosing their information to DPHHS would violate our internal policies as well as their right to privacy.
    - The language of DPHHS is broad and undefined. As rules and regulation are added and amended each legislative session, HCM cannot know if our faith-based discipleship program will be allowed to exist under State Requirements.
    - However, as part of our National Accreditation, all HCM locations follow a facility model that assures that all homes meet state fire marshal code and adhere to all municipal requirements that apply to residence dwelling size and occupancy, including but not limited to safety requirements, building codes, zoning regulations, and local ordinance requirements

4.) **Section 5. Preferential placement at and referral to certified recovery residences.**
(2) (a) Judge, Justice of the Peace, or magistrate may not refer an individual to an uncertified recovery residence.
(B) A Judge, Justice of the Peace, or magistrate may not refer an individual to a certified recovery residence that does not permit the individual to receive treatment or take medication prescribed by a qualified health care professional.
    - HCM is designed to work closely with the legal system and as an alternative to incarceration. We have a full time Legal Liaison dedicated to meet the needs of the DOC, offering a voluntary faith-based alternative. Ministry wide 92 % of all

admissions come through the DOC. Losing this referral source would be detrimental to our organization and to the legal community.

- To receive referrals from the DOC a home must accept all medications prescribed by a doctor. This includes all narcotic medications. HCM does not permit the use of narcotic medication as many people with substance use disorder engage in risky use of narcotics and/or are overcoming addictions to these medications and need a safe place to recover. HCM policies do allow for all lifesaving medication and metal health medication, other than the use of narcotics or those with a high probability of misuse.
- To receive referrals from the DOC a home must register with NARR. HCM and other transitional Recovery Support Programs are unable to Certify through NARR. Reason listed below:
- Although the "Social Model of Recovery" used by NARR, mirrors many HCM standards there are also substantial differences.
- NARR does not allow homes to limit a resident's length of stay. Instead, there are policies and procedures that promote resident-driven length of stay. Hope Center Ministries is a one-year residential program. Residents have a set admission, completion, and graduation date.
- There are also many security provisions that HCM has in place (including a required lights out time, limited phone use in the beginning of the program, and the requirement to search belongings) that are not permittable through NARR.
- NARR does not allow for any type of Vocational Training. All residents are required to pay for services through traditional employment. Although having a job is the goal and all HCM residents graduate gainfully employed, they are not prepared to begin working immediately. HCM serves as a bridge between an institution or homeless to sober or independent living. We help a resident obtain employments skills, build a resume, and learn to balance life and recovery. When a new resident arrives many only come with the cloths they are wearing. They do not have an ID, birth certificate, Driver's License, or a vehicle. As a resident transitions through the phases of our program we provide transportation and case management to help them become as independent as possible and graduate gainfully employed.

I appreciate your time and am happy to answer any additional questions.

Carolyn Belling
Hope Center Ministries
(406) 461-7443
c.belling@hopecm.com
www.hopecm.com

MINUTES

MONTANA HOUSE OF REPRESENTATIVES

68th LEGISLATURE - REGULAR SESSION

COMMITTEE ON (H) JUDICIARY

Call to Order: Chair Amy Regier-R, on April 05, 2023 at 7:05 AM, in 137

ROLL CALL

Members Present:	Rep. Amy Regier, Chair (R) Rep. Laurie Bishop, Vice Chair (D) Rep. Brandon Ler, Vice Chair (R) Rep. Jennifer Carlson (R) Rep. Lee Deming (R) Rep. Neil Duram (R) Rep. Tom France (D) Rep. Jedediah Hinkle (R) Rep. SJ Howell (D) Rep. Greg Kmetz (R) Rep. Casey Knudsen (R) Rep. Wayne Rusk (R) Rep. Lola Sheldon-Galloway (R) Rep. Laura Smith (D)
Members Excused:	Rep. Kim Abbott (D) Rep. Jodee Etchart (R) Rep. Donavon Hawk (D) Rep. Caleb Hinkle (R) Rep. Braxton Mitchell (R) Rep. Zooey Zephyr (D)
Staff Present:	Jamie Van Valkenburg, Secretary Rachel Weiss, Research Analyst

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:

Hearing & Date Posted:

SB 333 03/31/2023
SB 339 03/31/2023
SB 376 04/01/2023
SB 392 03/31/2023

SB 396 03/31/2023
SB 397 03/31/2023
SB 423 03/31/2023
SB 445 03/31/2023

Executive Action:

SB 38
SB 211 TO TABLE
SB 218 BE CONCURRED IN
SB 224 BE CONCURRED IN
SB 326 TO TABLE
SB 361 TO TABLE
SB 419
SB 443
SB 459 BE CONCURRED IN
SB 488 BE CONCURRED IN
SB 490 BE CONCURRED IN AS AMENDED
SB 499
SB 294 BE CONCURRED IN

HEARING ON SB 376 - Revise covenant laws

Opening Statement:

07:06:19 Sen. Kenneth Bogner (R), SD 19, opened the hearing on SB 376, Revise covenant laws.

Proponent Testimony:

07:08:24 Ella Smith, Montana Advocates for Children

07:10:31 Robin Turner, Women's Foundation of Montana

07:10:55 Sam Forstag, City of Bozeman

07:12:16 Stephanie Baucus, Attorney, on behalf of former and current clients

07:14:44 Dan Brooks, Billings Chamber of Commerce

07:16:47 Greg Sullivan, City of Bozeman

Opponent Testimony:

07:18:07 Jaymie Bowditch, Montana Association of Realtors

07:20:21 Ross Keogh, Self

07:22:47 Alana Griffith, Self

07:25:15 Bill Gowen, Montana Land Title Association

EXHIBIT(230405JUHa1)

07:27:49 Pat Keim, Self

07:29:56 Zoe King, Self

07:32:31 Peggy Trenk, Montana Resources Association

07:33:43 Alan Olson, Montana Petroleum Association

07:34:59 Kerry Hegriberg, Montana Bankers Association

07:36:03 Cory Shaw, Montana Building Industry Association

07:36:50 Ronda Wiggers, Self

07:37:55 Aimee Grmoljez, Self

07:39:41 Andy Skinner, Self

07:41:59 Jeffery Yates, Triple Tree Ranch Owners' Association

07:44:24 Tom Bourguignon, Self

07:46:38 Randall Snyder, Self

07:49:10 Peter Van Tuyn, Self

08:05:39 Sam Sill, Montana Association of Realtors

Informational Witness Testimony:

None

Questions from Committee:

07:51:14 Rep. Greg Kmetz

08:14:50 Sen. Kenneth Bogner-R

Closing Statement:

08:15:01 Sen. Kenneth Bogner (R), SD 19, closed the hearing on SB 376.

HEARING ON SB 339 - Establish reasonable childhood independence laws

Opening Statement:

08:16:48 Sen. Kenneth Bogner (R), SD 19, opened the hearing on SB 339, Establish reasonable childhood independence laws.

Proponent Testimony:

None

Opponent Testimony:

None

Informational Witness Testimony:

None

Questions from Committee:

08:18:26 Rep. Jedediah Hinkle

08:20:40 Sen. Kenneth Bogner-R

08:21:29 Vice Chair Laurie Bishop

Closing Statement:

08:21:54 Sen. Kenneth Bogner (R), SD 19, closed the hearing on SB 339.

HEARING ON SB 396 - Revise electronic driver's license privacy laws

Opening Statement:

08:22:17 Sen. Kenneth Bogner (R), SD 19, opened the hearing on SB 396, Revise electronic driver's license privacy laws.

Proponent Testimony:

08:23:42 Robin Turner, American Civil Liberties Union of Montana (ACLUM)

08:24:05 Steve Cape, Coalition of Safety and Justice

Opponent Testimony:

None

Informational Witness Testimony:

None

Questions from Committee:

08:25:20 Rep. Lola Sheldon-Galloway

08:25:40 Sen. Kenneth Bogner-R

Closing Statement:

08:26:03 Sen. Kenneth Bogner (R), SD 19, closed the hearing on SB 396.

HEARING ON SB 423 - Generally revise liability related to firearm hold agreements

Opening Statement:

08:27:13 Sen. Kenneth Bogner (R), SD 19, opened the hearing on SB 423, Generally revise liability related to firearm hold agreements.

Proponent Testimony:

08:28:48	Ed Beall, Capital Sports of Helena
08:31:45	Jason Swant, Prickly Pear Sportsmen's Association (PPSA)
08:33:59	Rebecca Squires, Self
08:35:09	Michael Hossfeld, Self
08:37:03	Roger Hagan, Montana Department of the American Legion and Montana National Guard Associations
08:38:18	Jennifer Prebble, Self
08:38:52	Senator Mary Ann Dunwell, SD 42
08:40:27	Matt Kuntz, NAMI Montana

Opponent Testimony:

None

Informational Witness Testimony:

None

Questions from Committee:

08:41:49	Rep. Neil Duram
08:42:58	Rep. Laura Smith

Closing Statement:

08:43:10 Sen. Kenneth Bogner (R), SD 19, closed the hearing on SB 423.

HEARING ON SB 445 - Allow a professional person to testify remotely in certain criminal proceedings

Opening Statement:

08:44:04 Sen. Kenneth Bogner (R), SD 19, opened the hearing on SB 445, Allow a professional person to testify remotely in certain criminal proceedings.

Proponent Testimony:

08:45:05 Brian Thompson, Montana Attorney Association

08:46:26 Paula Stannard, Department of Public Health and Human Services

08:47:56 Matt Kuntz, NAMI Montana

Opponent Testimony:

None

Informational Witness Testimony:

None

Questions from Committee:

08:49:38 Rep. Lola Sheldon-Galloway

08:53:19 Paula Stannard

Closing Statement:

08:53:31 Sen. Kenneth Bogner (R), SD 19, closed the hearing on SB 445.

HEARING ON SB 333 - Create offense of trespass by unmanned aerial vehicle

Opening Statement:

08:54:24 Sen. Greg Hertz (R), SD 6, opened the hearing on SB 333, Create offense of trespass by unmanned aerial vehicle.

EXHIBIT(230405JUHa2)

Proponent Testimony:

09:00:10 Mark Lambracht, Montana Electric Cooperative Association

09:01:03 Steve Cape, Coalition of Safety and Justice

09:03:27 Charles Denowh, United Property Owners of Montana

Opponent Testimony:

09:05:07 Steve White, Self

09:07:54 Greg Van Horssen, State Farm

09:08:59 Bruce Spencer, NOMIC Montana

09:09:30 Brian Thompson, Montana Sheriffs and Peace Officers Association (MSPOA)

09:10:36 Robin Turner, American Civil Liberties Union of Montana (ACLUM)

09:13:01 Alan Olson, Montana Petroleum Association

09:13:41 Peggy Trenk, Treasure State Resources Association

09:14:16 Sam Sill, Montana Association of Realtors

09:14:55 Cory Shaw, Montana Building Association

Informational Witness Testimony:

None

Questions from Committee:

09:16:27 Rep. Tom France

09:34:59 Sen. Greg Hertz-R

Closing Statement:

09:35:43 Sen. Greg Hertz (R), SD 6, closed the hearing on SB 333.

HEARING ON SB 392 - Revise determination of court costs for coal mining

Opening Statement:

09:37:44 Sen. Steve Fitzpatrick (R), SD 10, opened the hearing on SB 392, Revise determination of court costs for coal mining.

Proponent Testimony:

09:39:24 John Metropoulos, Westmoreland Mining

09:41:18 George Harris, Montana Coal Counsel

09:43:50 Dave Galt, Navajo Transitional Energy Company

09:44:15 Shelby DeMars, Montana Association of Oil, Gas and Coal

Opponent Testimony:

09:45:14 Chris McLean, Self

09:48:22 Steve Charter, Self

09:51:01 Pat Thiele, Bull Mountain Land Alliance

EXHIBIT(230405JUHa3)

09:53:27 Bronya Lechtman, Northern Planes Resource Center

09:53:59 Caryn Miske, Sierra Club

Informational Witness Testimony:

09:55:40 Angie Colamaria, Department of Environmental Quality

Questions from Committee:

09:56:06 Vice Chair Laurie Bishop

10:10:39 Chris McLean, Self

Closing Statement:

10:11:58 Sen. Steve Fitzpatrick (R), SD 10, closed the hearing on SB 392.

HEARING ON SB 397 - Generally revise laws related to privacy and facial recognition technology

Opening Statement:

10:14:23 Sen. Kenneth Bogner (R), SD 19, opened the hearing on SB 397, Generally revise laws related to privacy and facial recognition technology.

Proponent Testimony:

10:25:16 Kendall Cotton, Frontier Institute

10:26:57 Liam McCollum, Americans for Prosperity of Montana

10:27:57 Katie Sullivan, HD 89

10:29:21 Steve Cape, Coalition for Safety and Justice

EXHIBIT(230405JUHa4)

Opponent Testimony:

10:33:05 EJ Redding, Security Industry Association

10:34:58 Brian Thompson, Montana Sheriffs and Peace Officers Association (MSPOA)

10:36:25 Robin Turner, American Civil Liberties Union of Montana (ACLUM)

10:39:10 Colby Williams, Security Industry Association

Informational Witness Testimony:

10:41:43 Laurie Bakri, Motor Vehicle Department

Questions from Committee:

10:42:27 Rep. Greg Kmetz

10:58:53 Sen. Kenneth Bogner-R

Closing Statement:

10:59:57 Sen. Kenneth Bogner (R), SD 19, closed the hearing on SB 397.

11:01:25 **Recessed**

11:39:18 **Reconvened**

EXECUTIVE ACTION ON SB 38 - Generally revise sex offender level designations

11:39:31 **Motion:** Vice Chair Brandon Ler moved that **SB 38 BE CONCURRED IN.**

11:40:09 **Motion:** Vice Chair Brandon Ler moved that **SB 38 BE AMENDED.**

Discussion:

11:42:47 Rep. Jennifer Carlson

11:42:55 Rachel Weiss

11:44:27 Rep. Jennifer Carlson

11:44:33 Rachel Weiss

Vote: Motion carried unanimously by roll call vote.

11:46:13 **Motion:** Vice Chair Brandon Ler moved that **SB 38 BE CONCURRED IN AS AMENDED.**

Vote: Motion carried 15 - 4 by roll call vote with Rep. Bishop, Rep. France, Rep. Howell, Rep. Zephyr, voting no.
Rep. France, Rep. Zephyr, By Proxy

Carrier Assigned: Rep. Jennifer Carlson

EXECUTIVE ACTION ON SB 211 - Article V convention commissioner selection and credentialing act

11:47:49 **Motion:** Vice Chair Brandon Ler moved that **SB 211 BE CONCURRED IN.**

Discussion:

11:47:54 Rachel Weiss

11:48:16 Rep. Jedediah Hinkle

11:49:06 Rep. Jennifer Carlson

11:50:08 Rep. Lola Sheldon-Galloway

Vote: Motion failed 16 - 3 by roll call vote with Rep. Carlson, Rep. Knudsen, Rep. Regier, voting yes.

11:51:30 **Motion:** Vice Chair Brandon Ler moved that **SB 211 BE TABLED.**

Vote: Motion carried unanimously by voice vote.

EXECUTIVE ACTION ON SB 218 - Revise laws pertaining to settlements

11:52:10 **Motion:** Vice Chair Brandon Ler moved that **SB 218 BE CONCURRED IN.**

Vote: Motion carried 13 - 6 by roll call vote with Rep. Bishop, Rep. France, Rep. Hawk, Rep. Howell, Rep. Smith, Rep. Zephyr, voting no.
Rep. France, By Proxy

EXECUTIVE ACTION ON SB 224 - Require court report on district court case numbers and substitutions

11:53:42 **Motion:** Vice Chair Brandon Ler moved that **SB 224 BE CONCURRED IN.**

07:55:14 **Vote:** Motion carried 13 - 6 by roll call vote with Rep. Bishop, Rep. France, Rep. Hawk, Rep. Howell, Rep. Smith, Rep. Zephyr, voting no.
Rep. France, By Proxy

EXECUTIVE ACTION ON SB 326 - Generally revise crime laws

11:57:42 **Motion:** Vice Chair Brandon Ler moved that **SB 326 BE CONCURRED IN.**

Discussion:

11:58:45 Vice Chair Laurie Bishop

11:58:47 Rep. Jedediah Hinkle

11:58:56 Rep. SJ Howell

Vote: Motion failed 14 - 5 by roll call vote with Rep. Carlson, Rep. Hinkle, Rep. Hinkle, Rep. Ler, Rep. Mitchell, voting yes.
Rep. Hinkle, By Proxy

12:00:54 **Motion:** Vice Chair Brandon Ler moved that **SB 326 BE TABLED.**

Vote: Motion carried unanimously by voice vote.

EXECUTIVE ACTION ON SB 361 - Prohibit discrimination by any person or entity because of firearms

12:01:44 **Motion:** Vice Chair Brandon Ler moved that **SB 361 BE CONCURRED IN.**

12:01:49 **Motion:** Vice Chair Brandon Ler moved that **SB 361 BE TABLED.**

Vote: Motion carried 17 - 2 by roll call vote with Rep. Hinkle, Rep. Sheldon-Galloway, voting no.

EXECUTIVE ACTION ON SB 419 - Ban tik-tok in Montana

12:03:05 **Motion:** Vice Chair Brandon Ler moved that **SB 419 BE CONCURRED IN.**

Discussion:

12:03:10 Rep. Zooey Zephyr

Vote: Motion carried 11 - 8 by roll call vote with Rep. Bishop, Rep. France, Rep. Hawk, Rep. Hinkle, Rep. Howell, Rep. Knudsen, Rep. Smith, Rep. Zephyr, voting no.
Rep. France, Rep. Hinkle, By Proxy

Carrier Assigned: Rep. Amy Regier

EXECUTIVE ACTION ON SB 443 - Revise POST council membership

12:05:51 **Motion:** Vice Chair Brandon Ler moved that **SB 443 BE CONCURRED IN.**

Discussion:

12:05:58 Rachel Weiss

12:06:11 Rep. Neil Duram

12:06:17 **Motion:** Rep. Neil Duram moved that **SB 443 BE AMENDED.**

Discussion:

12:06:58 Rep. Neil Duram

Vote: Motion carried unanimously by roll call vote.

12:08:16 **Motion:** Vice Chair Brandon Ler moved that **SB 443 BE CONCURRED IN AS AMENDED.**

Vote: Motion carried 18 - 1 by voice vote with Rep. Carlson, voting no.

Carrier Assigned: Rep. Neil Duram

EXECUTIVE ACTION ON SB 459 - Revise laws related to pretrial release

12:09:29 **Motion:** Vice Chair Brandon Ler moved that **SB 459 BE CONCURRED IN.**

Vote: Motion carried 14 - 5 by roll call vote with Rep. Etchart, Rep. Ler, Rep. Mitchell, Rep. Regier, Rep. Sheldon-Galloway, voting no.
Rep. Etchart, By Proxy

EXECUTIVE ACTION ON SB 488 - Abolish common law marriage

12:11:01 **Motion:** Vice Chair Brandon Ler moved that **SB 488 BE CONCURRED IN.**

Discussion:

12:11:09 Rachel Weiss

12:11:10 Rep. Laura Smith

12:12:46 Rep. Lola Sheldon-Galloway

12:13:26 Rep. Casey Knudsen

Vote: Motion carried 17 - 2 by roll call vote with Rep. Smith, Rep. Zephyr, voting no.

EXECUTIVE ACTION ON SB 490 - Generally revising the legislature's investigative powers

12:15:18 **Motion:** Vice Chair Brandon Ler moved that **SB 490 BE CONCURRED IN.**

12:15:25 **Motion:** Vice Chair Brandon Ler moved that **SB 490 BE AMENDED.**

Discussion:

12:16:14 Vice Chair Laurie Bishop

Vote: Motion carried 11 - 8 by roll call vote with Rep. Bishop, Rep. Duram, Rep. France, Rep. Hawk, Rep. Howell, Rep. Rusk, Rep. Smith, Rep. Zephyr, voting no.
Rep. France, By Proxy

12:17:54 **Motion:** Vice Chair Brandon Ler moved that **SB 490 BE CONCURRED IN AS AMENDED.**

Discussion:

12:18:04 Rep. Neil Duram

Vote: Motion carried 10 - 9 by roll call vote with Rep. Bishop, Rep. Duram, Rep. France, Rep. Hawk, Rep. Howell, Rep. Kmetz, Rep. Rusk, Rep. Smith, Rep. Zephyr, voting no.
Rep. France, By Proxy

EXECUTIVE ACTION ON SB 499 - Revise adverse possesssion laws relating to certain land and improvements

12:19:42 **Motion:** Vice Chair Brandon Ler moved that **SB 499 BE CONCURRED IN.**

12:20:10 **Motion:** Vice Chair Brandon Ler moved that **SB 499 BE AMENDED.**

Discussion:

12:20:19 Rachel Weiss

Vote: Motion carried 13 - 6 by roll call vote with Rep. Bishop, Rep. France, Rep. Howell, Rep. Knudsen, Rep. Smith, Rep. Zephyr, voting no.
Rep. France, By Proxy

12:21:57 **Motion:** Vice Chair Brandon Ler moved that **SB 499 BE CONCURRED IN.**

Discussion:

12:22:12 Rep. Casey Knudsen

12:24:27 Rep. Donavon Hawk

12:24:28 Rep. Lola Sheldon-Galloway

12:24:29 Rachel Weiss

Vote: Motion carried 10 - 9 by roll call vote with Rep. Bishop, Rep. Duram, Rep. France, Rep. Hawk, Rep. Howell, Rep. Kmetz, Rep. Knudsen, Rep. Smith, Rep. Zephyr, voting no.
Rep. France, By Proxy

12:22:16 **Motion:** Rep. Donavon Hawk moved that **SB 499 TO TABLE.**

Vote: Motion failed 10 - 9 by roll call vote with Rep. Bishop, Rep. Duram, Rep. France, Rep. Hawk, Rep. Howell, Rep. Kmetz, Rep. Knudsen, Rep. Smith, Rep. Zephyr, voting yes.
Rep. France, By Proxy

13:11:09 **Motion:** Vice Chair Brandon Ler moved that **SB 499 BE CONCURRED IN AS AMENDED.**

Vote: Motion carried 10 - 9 by roll call vote with Rep. Bishop, Rep. Duram, Rep. France, Rep. Hawk, Rep. Howell, Rep. Kmetz, Rep. Knudsen, Rep.

Smith, Rep. Zephyr, voting no.
Rep. Hawk, Rep. Zephyr, By Proxy

Carrier Assigned: Rep. David Bedey

EXECUTIVE ACTION ON SB 294 - Establish the end of watch trust

12:35:35 **Motion:** Vice Chair Brandon Ler moved that **SB 294 BE CONCURRED IN.**

Vote: Motion carried 16 - 3 by roll call vote with Rep. Knudsen, Rep. Sheldon-Galloway, Rep. Zephyr, voting no.
Rep. Zephyr, By Proxy

ADJOURNMENT

Adjournment: 12:27:01

Jamie Van Valkenburg, Secretary

Additional Documents:EXHIBIT(230405JUHaad)

Montana State Legislature

2023 Session

Additional House Documents

- Business Report
- Roll Call -Attendance
- Standing Committee Reports
- Tabled Bills
- Fiscal Reports [if any]
- Roll Call Votes
- Proxies signed in ink
- Visitor's sign-in sheet.
- Informational Item's
- Witness Statements if any,
- Zoom/Internet Testimony Information & index
- Any other type of documents such as:
  @ Petitions, {if any} Emails, all documents given to Committee Secretary before & after meeting.
- Public Testimony documents may or may not be scanned, they will be on file at the Montana Historical Society.
- Disclaimer: within the online minutes document you will see vacate spaces within the document. The LAWS II system creates these blank areas they are not loss of information.

The original exhibit/items are on file at the Montana Historical Society and may be viewed there.

Montana Historical Society Archives,
225 N. Roberts, Helena, MT 59620-1201
E-Document Specialist Susie Hamilton

BUSINESS REPORT

MONTANA HOUSE

REGULAR

(H) Judiciary

Date: 04/05/2023 **Time:** 7:00 AM

Place: Capitol **Room:** 137

BILLS and RESOLUTIONS HEARD:

SB 333 Create offense of trespass by unmanned aerial vehicle - Sen. Greg Hertz

SB 339 Establish reasonable childhood independence laws - Sen. Kenneth Bogner

SB 376 Revise covenant laws - Sen. Kenneth Bogner

SB 392 Revise determination of court costs for coal mining - Sen. Steve Fitzpatrick

SB 396 Revise electronic driver's license privacy laws - Sen. Kenneth Bogner

SB 397 Generally revise laws related to privacy and facial recognition technology - Sen. Kenneth Bogner

SB 423 Generally revise liability related to firearm hold agreements - Sen. Kenneth Bogner

SB 445 Allow a professional person to testify remotely in certain criminal proceedings - Sen. Kenneth Bogner

EXECUTIVE ACTION TAKEN:

SB 211:

SB 211 To Table

SB 218:

SB 218 Be Concurred In

SB 224:

SB 224 Be Concurred In

SB 294:

SB 294 Be Concurred In

SB 326:

SB 326 To Table

SB 361:

SB 361 To Table

SB 38:

SB 38 Be Concurred In as Amended

SB 419:

SB 419 Be Concurred In

SB 443:

SB 443 Be Concurred In as Amended

SB 459:

SB 459 Be Concurred In

SB 488:

SB 488 Be Concurred In

SB 490:

SB 490 Be Concurred In as Amended

SB 499:

SB 499 Be Concurred In as Amended

Comments:

Amy Regier

Rep. Amy Regier-R, Chair

House

Roll Call

(H) Judiciary

DATE: 04/05/2023
TIME: 7:00 AM

NAME	PRESENT	ABSENT/EXCUSED
Ler, Brandon	X	
Bishop, Laurie	X	
Mitchell, Braxton		X
Sheldon-Galloway, Lola	X	
Smith, Laura	X	
Deming, Lee	X	
Knudsen, Casey	X	
France, Tom	X	
Carlson, Jennifer	X	
Howell, SJ	X	
Hinkle, Caleb		X
Duram, Neil	X	
Hawk, Donavon		X
Zephyr, Zooey		X
Kmetz, Greg	X	
Etchart, Jodee		X
Hinkle, Jedediah	X	
Rusk, Wayne	X	
Abbott, Kim		X
Regier, Amy	X	

BILL TABLED NOTICE

House (H) Judiciary

The House (H) Judiciary TABLED

SB211-Article V convention commissioner selection and credentialing act- Sen. Tom McGillvray

SB326-Generally revise crime laws- Sen. Chris Friedel

SB361-Prohibit discrimination by any person or entity because of firearms- Sen. John Fuller

SB499-Revise adverse possession laws relating to certain land and improvements- Sen. Tom McGillvray

by motion, on Wednesday April 05, 2023, (PLEASE USE THIS ACTION DATE IN LAWS BILL STATUS).

(For the Committee)

(For the Chief Clerk of the House)

4/6 @ 3:15pm

(time) (date)

House Standing Committee Report

April 05, 2023

To the Speaker,

We, your committee on **(H) Judiciary** recommend that **Senate Bill 490** (first reading copy – white) **Be Concurred In As Amended.** The referenced amendment is HB0490.001.001

Carrier: TBD

Signed: Amy Regier

Rep. Amy Regier-R, Chair

-End-

Committee Vote:

Yes 10, No 9

House Standing Committee Report

April 05, 2023

To the Speaker,

We, your committee on **(H) Judiciary** recommend that **Senate Bill 499** (first reading copy – white) **Be Concurred In As Amended.** The referenced amendment is HB0499.001.001

Carrier: TBD

Signed: Amy Regier

Rep. Amy Regier-R, Chair

-End-

Committee Vote:

Yes 10, No 9

House Standing Committee Report

April 05, 2023

To the Speaker,

We, your committee on **(H) Judiciary** recommend that **Senate Bill 38** (first reading copy – white) **Be Concurred In as Amended**. The referenced amendment is SB0038.001.001.

Carrier: Rep. Carlson

Signed: Amy Regier

Rep. Amy Regier-R, Chair

-End-

Committee Vote:

Yes 15, No 4

House Standing Committee Report

April 05, 2023

To the Speaker,

We, your committee on **(H) Judiciary** recommend that **Senate Bill 443** (first reading copy – white) **Be Concurred In as Amended.** The referenced amendment is HB0443.002.001

Carrier: Rep. Duram

Signed: Amy Regier

Rep. Amy Regier-R, Chair

-End-

Committee Vote:

Yes 18, No 1

House Standing Committee Report

April 05, 2023

To the Speaker,

We, your committee on **(H) Judiciary** recommend that **Senate Bill 459** (first reading copy – white) **Be Concurred In**.

Carrier: Rep. Carlson

Signed: Amy Regier

Rep. Amy Regier-R, Chair

-End-

Committee Vote:

Yes 14, No 5

House Standing Committee Report

April 05, 2023

To the Speaker,

We, your committee on **(H) Judiciary** recommend that **Senate Bill 488** (first reading copy – white) **Be Concurred In**.

Carrier: Rep. Sheldon-Galloway

Signed: Amy Regier

Rep. Amy Regier-R, Chair

-End-

Committee Vote:

Yes 17, No 2

House Standing Committee Report

April 05, 2023

To the Speaker,

We, your committee on **(H) Judiciary** recommend that **Senate Bill 419** (first reading copy – white) **Be Concurred In**.

Carrier: Rep. A. Regier

Signed: Amy Regier

Rep. Amy Regier-R, Chair

-End-

Committee Vote:

Yes 11, No 8

House Standing Committee Report

April 05, 2023

To the Speaker,

We, your committee on **(H) Judiciary** recommend that **Senate Bill 294** (first reading copy – white) **Be Concurred In**.

Carrier: Rep. Duram

Signed: _____

Rep. Amy Regier-R, Chair

-End-

Committee Vote:

Yes 16, No 3

House Standing Committee Report

April 05, 2023

To the Speaker,

We, your committee on **(H) Judiciary** recommend that **Senate Bill 224** (first reading copy – white) **Be Concurred In**.

Carrier: TBD

Signed: Amy Regier

Rep. Amy Regier-R, Chair

-End-

Committee Vote:

Yes 13, No 6

House Standing Committee Report

April 05, 2023

To the Speaker,

We, your committee on **(H) Judiciary** recommend that **Senate Bill 218** (first reading copy – white) **Be Concurred In**.

Carrier: TBD

Signed: Amy Regier

Rep. Amy Regier-R, Chair

-End-

Committee Vote:

Yes 13, No 6

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL VOTE

BILL NUMBER SB 294 DATE _____

MOTION DO Concur

NAME	AYE	NO	PROXY
VICE CHAIR LER	✓		
VICE CHAIR BISHOP	✓		
REP. MITCHELL	✓		
REP. SHELDON-GALLOWAY		✓	
REP. SMITH, L.	✓		
REP. DEMING	✓		✓
REP. KNUDSEN, C.		✓	
REP. FRANCE	✓		✓
REP. CARLSON	✓		
REP. HOWELL	✓		
REP. C. HINKLE	✓		✓
REP. DURAM	✓		
REP. HAWK	✓		
REP. ZEPHYR	-	✓	
REP. KMETZ	✓		
REP. ETCHART	✓		✓
REP. J. HINKLE	✓		
REP. RUSK	✓		
CHAIR REGIER, A.	✓		

19 MEMBERS

HOUSE COMMITTEE ON (H) JUDICIARY
April 05, 2023
VOTE TABULATION - SB 38

Rep. Ler made a Motion that SB0038.001.001 Be Amended
YEAS – 19 NAYS - 0

Y	Ler, Brandon
Y	Bishop, Laurie
Y	Mitchell, Braxton
Y	Sheldon-Galloway, Lola
Y	Smith, Laura
Y	Deming, Lee; by proxy
Y	Knudsen, Casey
Y	France, Tom; by proxy
Y	Carlson, Jennifer
Y	Howell, SJ
Y	Hinkle, Caleb; by proxy
Y	Duram, Neil
Y	Hawk, Donavon; by proxy
Y	Zephyr, Zooey; by proxy
Y	Kmetz, Greg
Y	Etchart, Jodee; by proxy
Y	Hinkle, Jedediah
Y	Rusk, Wayne
	Abbott, Kim; by proxy
Y	Regier, Amy

HOUSE COMMITTEE ON (H) JUDICIARY
April 05, 2023
VOTE TABULATION - SB 38

Rep. Ler made a Motion that SB 38 Be Concurred In as Amended
YEAS – 15 NAYS - 4

Y	Ler, Brandon
N	Bishop, Laurie
Y	Mitchell, Braxton
Y	Sheldon-Galloway, Lola
Y	Smith, Laura
Y	Deming, Lee; by proxy
Y	Knudsen, Casey
N	France, Tom; by proxy
Y	Carlson, Jennifer
N	Howell, SJ
Y	Hinkle, Caleb; by proxy
Y	Duram, Neil
Y	Hawk, Donavon; by proxy
N	Zephyr, Zooey; by proxy
Y	Kmetz, Greg
Y	Etchart, Jodee; by proxy
Y	Hinkle, Jedediah
Y	Rusk, Wayne
	Abbott, Kim; by proxy
Y	Regier, Amy

HOUSE COMMITTEE ON (H) JUDICIARY
April 05, 2023
VOTE TABULATION - SB 211

Rep. Ler made a Motion that SB 211 Be Concurred In
YEAS – 3 NAYS - 16

N	Ler, Brandon
N	Bishop, Laurie
N	Mitchell, Braxton
N	Sheldon-Galloway, Lola
N	Smith, Laura
N	Deming, Lee; by proxy
Y	Knudsen, Casey
N	France, Tom; by proxy
Y	Carlson, Jennifer
N	Howell, SJ
N	Hinkle, Caleb; by proxy
N	Duram, Neil
N	Hawk, Donavon
N	Zephyr, Zooey
N	Kmetz, Greg
N	Etchart, Jodee; by proxy
N	Hinkle, Jedediah
N	Rusk, Wayne
	Abbott, Kim; by proxy
Y	Regier, Amy

HOUSE COMMITTEE ON (H) JUDICIARY
April 05, 2023
VOTE TABULATION - SB 211

Rep. Ler made a Motion that SB 211 To Table
YEAS – 19 NAYS - 0

Y	Ler, Brandon
Y	Bishop, Laurie
Y	Mitchell, Braxton
Y	Sheldon-Galloway, Lola
Y	Smith, Laura
Y	Deming, Lee; by proxy
Y	Knudsen, Casey
Y	France, Tom; by proxy
Y	Carlson, Jennifer
Y	Howell, SJ
Y	Hinkle, Caleb; by proxy
Y	Duram, Neil
Y	Hawk, Donavon; by proxy
Y	Zephyr, Zooey; by proxy
Y	Kmetz, Greg
Y	Etchart, Jodee; by proxy
Y	Hinkle, Jedediah
Y	Rusk, Wayne
	Abbott, Kim; by proxy
Y	Regier, Amy

HOUSE COMMITTEE ON (H) JUDICIARY
April 05, 2023
VOTE TABULATION - SB 218

Rep. Ler made a Motion that SB 218 Be Concurred In
YEAS – 13 NAYS - 6

Y	Ler, Brandon
N	Bishop, Laurie
Y	Mitchell, Braxton
Y	Sheldon-Galloway, Lola
N	Smith, Laura
Y	Deming, Lee; by proxy
Y	Knudsen, Casey
N	France, Tom; by proxy
Y	Carlson, Jennifer
N	Howell, SJ
Y	Hinkle, Caleb; by proxy
Y	Duram, Neil
N	Hawk, Donavon
N	Zephyr, Zooey
Y	Kmetz, Greg
Y	Etchart, Jodee; by proxy
Y	Hinkle, Jedediah
Y	Rusk, Wayne
	Abbott, Kim; by proxy
Y	Regier, Amy

HOUSE COMMITTEE ON (H) JUDICIARY
April 05, 2023
VOTE TABULATION - SB 224

Rep. Ler made a Motion that SB 224 Be Concurred In
YEAS – 13 NAYS - 6

Y	Ler, Brandon
N	Bishop, Laurie
Y	Mitchell, Braxton
Y	Sheldon-Galloway, Lola
N	Smith, Laura
Y	Deming, Lee; by proxy
Y	Knudsen, Casey
N	France, Tom; by proxy
Y	Carlson, Jennifer
N	Howell, SJ
Y	Hinkle, Caleb; by proxy
Y	Duram, Neil
N	Hawk, Donavon
N	Zephyr, Zooey
Y	Kmetz, Greg
Y	Etchart, Jodee; by proxy
Y	Hinkle, Jedediah
Y	Rusk, Wayne
	Abbott, Kim; by proxy
Y	Regier, Amy

HOUSE COMMITTEE ON (H) JUDICIARY
April 05, 2023
VOTE TABULATION - SB 326

Rep. Ler made a Motion that SB 326 Be Concurred In
YEAS – 5 NAYS - 14

Y	Ler, Brandon
N	Bishop, Laurie
Y	Mitchell, Braxton
N	Sheldon-Galloway, Lola
N	Smith, Laura
N	Deming, Lee; by proxy
N	Knudsen, Casey
N	France, Tom; by proxy
Y	Carlson, Jennifer
N	Howell, SJ
Y	Hinkle, Caleb; by proxy
N	Duram, Neil
N	Hawk, Donavon
N	Zephyr, Zooey
N	Kmetz, Greg
N	Etchart, Jodee; by proxy
Y	Hinkle, Jedediah
N	Rusk, Wayne
	Abbott, Kim; by proxy
N	Regier, Amy

HOUSE COMMITTEE ON (H) JUDICIARY
April 05, 2023
VOTE TABULATION - SB 326

Rep. Ler made a Motion that SB 326 To Table
YEAS – 19 NAYS - 0

Y	Ler, Brandon
Y	Bishop, Laurie
Y	Mitchell, Braxton
Y	Sheldon-Galloway, Lola
Y	Smith, Laura
Y	Deming, Lee; by proxy
Y	Knudsen, Casey
Y	France, Tom; by proxy
Y	Carlson, Jennifer
Y	Howell, SJ
Y	Hinkle, Caleb; by proxy
Y	Duram, Neil
Y	Hawk, Donavon
Y	Zephyr, Zooey
Y	Kmetz, Greg
Y	Etchart, Jodee; by proxy
Y	Hinkle, Jedediah
Y	Rusk, Wayne
	Abbott, Kim; by proxy
Y	Regier, Amy

HOUSE COMMITTEE ON (H) JUDICIARY
April 05, 2023
VOTE TABULATION - SB 361

Rep. Ler made a Motion that SB 361 To Table
YEAS – 17 NAYS - 2

Y	Ler, Brandon
Y	Bishop, Laurie
Y	Mitchell, Braxton
N	Sheldon-Galloway, Lola
Y	Smith, Laura
Y	Deming, Lee; by proxy
Y	Knudsen, Casey
Y	France, Tom; by proxy
Y	Carlson, Jennifer
Y	Howell, SJ
Y	Hinkle, Caleb; by proxy
Y	Duram, Neil
Y	Hawk, Donavon
Y	Zephyr, Zooey
Y	Kmetz, Greg
Y	Etchart, Jodee; by proxy
N	Hinkle, Jedediah
Y	Rusk, Wayne
	Abbott, Kim; by proxy
Y	Regier, Amy

HOUSE COMMITTEE ON (H) JUDICIARY
April 05, 2023
VOTE TABULATION - SB 419

Rep. Ler made a Motion that SB 419 Be Concurred In
YEAS – 11 NAYS - 8

Y	Ler, Brandon
N	Bishop, Laurie
Y	Mitchell, Braxton
Y	Sheldon-Galloway, Lola
N	Smith, Laura
Y	Deming, Lee; by proxy
N	Knudsen, Casey
N	France, Tom; by proxy
Y	Carlson, Jennifer
N	Howell, SJ
N	Hinkle, Caleb; by proxy
Y	Duram, Neil
N	Hawk, Donavon
N	Zephyr, Zooey
Y	Kmetz, Greg
Y	Etchart, Jodee; by proxy
Y	Hinkle, Jedediah
Y	Rusk, Wayne
	Abbott, Kim; by proxy
Y	Regier, Amy

HOUSE COMMITTEE ON (H) JUDICIARY
April 05, 2023
VOTE TABULATION - SB 443

Rep. Duram made a Motion that SB0443.002.001 Be Amended
YEAS – 19 NAYS - 0

Y	Ler, Brandon
Y	Bishop, Laurie
Y	Mitchell, Braxton
Y	Sheldon-Galloway, Lola
Y	Smith, Laura
Y	Deming, Lee; by proxy
Y	Knudsen, Casey
Y	France, Tom; by proxy
Y	Carlson, Jennifer
Y	Howell, SJ
Y	Hinkle, Caleb; by proxy
Y	Duram, Neil
Y	Hawk, Donavon
Y	Zephyr, Zooey
Y	Kmetz, Greg
Y	Etchart, Jodee; by proxy
Y	Hinkle, Jedediah
Y	Rusk, Wayne
	Abbott, Kim; by proxy
Y	Regier, Amy

HOUSE COMMITTEE ON (H) JUDICIARY
April 05, 2023
VOTE TABULATION - SB 443

Rep. Ler made a Motion that SB 443 Be Concurred In as Amended
YEAS – 18 NAYS - 1

Y	Ler, Brandon
Y	Bishop, Laurie
Y	Mitchell, Braxton
Y	Sheldon-Galloway, Lola
Y	Smith, Laura
Y	Deming, Lee; by proxy
Y	Knudsen, Casey
Y	France, Tom; by proxy
N	Carlson, Jennifer
Y	Howell, SJ
Y	Hinkle, Caleb; by proxy
Y	Duram, Neil
Y	Hawk, Donavon
Y	Zephyr, Zooey
Y	Kmetz, Greg
Y	Etchart, Jodee; by proxy
Y	Hinkle, Jedediah
Y	Rusk, Wayne
	Abbott, Kim; by proxy
Y	Regier, Amy

HOUSE COMMITTEE ON (H) JUDICIARY
April 05, 2023
VOTE TABULATION - SB 459

Rep. Ler made a Motion that SB 459 Be Concurred In
YEAS – 14 NAYS - 5

N	Ler, Brandon
Y	Bishop, Laurie
N	Mitchell, Braxton
N	Sheldon-Galloway, Lola
Y	Smith, Laura
Y	Deming, Lee; by proxy
Y	Knudsen, Casey
Y	France, Tom; by proxy
Y	Carlson, Jennifer
Y	Howell, SJ
Y	Hinkle, Caleb; by proxy
Y	Duram, Neil
Y	Hawk, Donavon
Y	Zephyr, Zooey
Y	Kmetz, Greg
N	Etchart, Jodee; by proxy
Y	Hinkle, Jedediah
Y	Rusk, Wayne
	Abbott, Kim; by proxy
N	Regier, Amy

HOUSE COMMITTEE ON (H) JUDICIARY
April 05, 2023
VOTE TABULATION - SB 488

Rep. Ler made a Motion that SB 488 Be Concurred In
YEAS – 17 NAYS - 2

Y	Ler, Brandon
Y	Bishop, Laurie
Y	Mitchell, Braxton
Y	Sheldon-Galloway, Lola
N	Smith, Laura
Y	Deming, Lee; by proxy
Y	Knudsen, Casey
Y	France, Tom; by proxy
Y	Carlson, Jennifer
Y	Howell, SJ
Y	Hinkle, Caleb; by proxy
Y	Duram, Neil
Y	Hawk, Donavon
N	Zephyr, Zooey
Y	Kmetz, Greg
Y	Etchart, Jodee; by proxy
Y	Hinkle, Jedediah
Y	Rusk, Wayne
	Abbott, Kim; by proxy
Y	Regier, Amy

HOUSE COMMITTEE ON (H) JUDICIARY
April 05, 2023
VOTE TABULATION - SB 490

Rep. Ler made a Motion that SB0490.001.001 Be Amended
YEAS – 11 NAYS - 8

Y	Ler, Brandon
N	Bishop, Laurie
Y	Mitchell, Braxton
Y	Sheldon-Galloway, Lola
N	Smith, Laura
Y	Deming, Lee; by proxy
Y	Knudsen, Casey
N	France, Tom; by proxy
Y	Carlson, Jennifer
N	Howell, SJ
Y	Hinkle, Caleb; by proxy
N	Duram, Neil
N	Hawk, Donavon
N	Zephyr, Zooey
Y	Kmetz, Greg
Y	Etchart, Jodee; by proxy
Y	Hinkle, Jedediah
N	Rusk, Wayne
	Abbott, Kim; by proxy
Y	Regier, Amy

HOUSE COMMITTEE ON (H) JUDICIARY
April 05, 2023
VOTE TABULATION - SB 294

Rep. Ler made a Motion that SB 294 Be Concurred In
YEAS – 16 NAYS - 3

Y	Ler, Brandon
Y	Bishop, Laurie
Y	Mitchell, Braxton; by proxy
N	Sheldon-Galloway, Lola
Y	Smith, Laura
Y	Deming, Lee
N	Knudsen, Casey
Y	France, Tom
Y	Carlson, Jennifer
Y	Howell, SJ
Y	Hinkle, Caleb; by proxy
Y	Duram, Neil
Y	Hawk, Donavon; by proxy
N	Zephyr, Zooey; by proxy
Y	Kmetz, Greg
Y	Etchart, Jodee; by proxy
Y	Hinkle, Jedediah
Y	Rusk, Wayne
	Abbott, Kim; by proxy
Y	Regier, Amy

HOUSE COMMITTEE ON (H) JUDICIARY
April 05, 2023
VOTE TABULATION - SB 490

Rep. Ler made a Motion that SB 490 Be Concurred In as Amended
YEAS – 10 NAYS - 9

Y	Ler, Brandon
N	Bishop, Laurie
Y	Mitchell, Braxton
Y	Sheldon-Galloway, Lola
N	Smith, Laura
Y	Deming, Lee; by proxy
Y	Knudsen, Casey
N	France, Tom; by proxy
Y	Carlson, Jennifer
N	Howell, SJ
Y	Hinkle, Caleb; by proxy
N	Duram, Neil
N	Hawk, Donavon
N	Zephyr, Zooey
N	Kmetz, Greg
Y	Etchart, Jodee; by proxy
Y	Hinkle, Jedediah
N	Rusk, Wayne
	Abbott, Kim; by proxy
Y	Regier, Amy

HOUSE COMMITTEE ON (H) JUDICIARY
April 05, 2023
VOTE TABULATION - SB 499

Rep. Ler made a Motion that SB0499.001.001 Be Amended
YEAS – 13 NAYS - 6

Y	Ler, Brandon
N	Bishop, Laurie
Y	Mitchell, Braxton
Y	Sheldon-Galloway, Lola
N	Smith, Laura
Y	Deming, Lee; by proxy
N	Knudsen, Casey
N	France, Tom; by proxy
Y	Carlson, Jennifer
N	Howell, SJ
Y	Hinkle, Caleb; by proxy
Y	Duram, Neil
Y	Hawk, Donavon
N	Zephyr, Zooey
Y	Kmetz, Greg
Y	Etchart, Jodee; by proxy
Y	Hinkle, Jedediah
Y	Rusk, Wayne
	Abbott, Kim; by proxy
Y	Regier, Amy

HOUSE COMMITTEE ON (H) JUDICIARY
April 05, 2023
VOTE TABULATION - SB 499

Rep. Ler made a Motion that SB 499 Be Concurred In
YEAS – 10 NAYS - 9

Y	Ler, Brandon
N	Bishop, Laurie
Y	Mitchell, Braxton
Y	Sheldon-Galloway, Lola
N	Smith, Laura
Y	Deming, Lee; by proxy
N	Knudsen, Casey
N	France, Tom; by proxy
Y	Carlson, Jennifer
N	Howell, SJ
Y	Hinkle, Caleb; by proxy
N	Duram, Neil
N	Hawk, Donavon
N	Zephyr, Zooey
N	Kmetz, Greg
Y	Etchart, Jodee; by proxy
Y	Hinkle, Jedediah
Y	Rusk, Wayne
	Abbott, Kim; by proxy
Y	Regier, Amy

HOUSE COMMITTEE ON (H) JUDICIARY
April 05, 2023
VOTE TABULATION - SB 499

Rep. Hawk made a Motion that SB 499 To Table
YEAS – 9 NAYS - 10

N	Ler, Brandon
Y	Bishop, Laurie
N	Mitchell, Braxton
N	Sheldon-Galloway, Lola
Y	Smith, Laura
N	Deming, Lee; by proxy
Y	Knudsen, Casey
Y	France, Tom; by proxy
N	Carlson, Jennifer
Y	Howell, SJ
N	Hinkle, Caleb; by proxy
Y	Duram, Neil
Y	Hawk, Donavon
Y	Zephyr, Zooey
Y	Kmetz, Greg
N	Etchart, Jodee; by proxy
N	Hinkle, Jedediah
N	Rusk, Wayne
	Abbott, Kim; by proxy
N	Regier, Amy

HOUSE COMMITTEE ON (H) JUDICIARY
April 05, 2023
VOTE TABULATION - SB 499

Rep. Ler made a Motion that SB 499 Be Concurred In as Amended
YEAS – 10 NAYS - 9

Y	Ler, Brandon
N	Bishop, Laurie
Y	Mitchell, Braxton; by proxy
Y	Sheldon-Galloway, Lola
N	Smith, Laura
Y	Deming, Lee
N	Knudsen, Casey
N	France, Tom
Y	Carlson, Jennifer
N	Howell, SJ
Y	Hinkle, Caleb; by proxy
N	Duram, Neil
N	Hawk, Donavon; by proxy
N	Zephyr, Zooey; by proxy
N	Kmetz, Greg
Y	Etchart, Jodee; by proxy
Y	Hinkle, Jedediah
Y	Rusk, Wayne
	Abbott, Kim; by proxy
Y	Regier, Amy

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

AUTHORIZED COMMITTEE PROXY 68TH LEGISLATIVE SESSION

I request to be excused from the Judiciary Committee.

I desire to leave my proxy vote with Rep. Ler.

PLEASE USE PEN

BILL	MOTION (Include AMENDMENT #)	AYE	NO
SB38	Am 2.1	X	
SB38		X	
SB211			X
SB218		X	
SB294		X	
SB326			X
SB361		X	
SB419		X	
SB443	2.1	X	
SB443		X	
SB459			X
SB488		X	

BILL	MOTION (Include AMENDMENT #)	AYE	NO
SB490	Am 1.1	X	
SB490		X	
SB499	Am 1.1	X	
SB499	Table	~~X~~	X
SB499		X	

I authorize my vote to be matched with that of Rep. _____ for any amendments proposed on this date.

Rep. Lee Deming 4/5/23

(Signature) (Print Name) (Meeting Date)

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

AUTHORIZED COMMITTEE PROXY 68TH LEGISLATIVE SESSION

I request to be excused from the Judiciary Committee.

I desire to leave my proxy vote with Rep. _____.

PLEASE USE PEN

BILL	MOTION (Include AMENDMENT #)	AYE	NO
SB30	Bill		X
SB211	Bill		X
SB218	Bill		X
SB224	Bill		X
SB294	Bill	X	
SB326	Bill		X
SB361	Bill - Table	X	
SB419	Bill		X
SB443	Bill	X	
SB459	Bill	X	
SB488	Bill	X	
SB490	Bill		X

BILL	MOTION (Include AMENDMENT #)	AYE	NO
SB36	Amendment 1.1	X	
SB499	Bill		X
SB499	Bill - table	X	
SB499	amendment 1.1		X
SB443	amend 1.1	X	
SB490	amend 1.1		X

I authorize my vote to be matched with that of Rep. _____ for any amendments proposed on this date.

Rep. _____ (Signature) Tony Franke (Print Name) 4.5.23 (Meeting Date)

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

AUTHORIZED COMMITTEE PROXY 68TH LEGISLATIVE SESSION

I request to be excused from the Judiciary Committee.

I desire to leave my proxy vote with Rep. J. Hinkle.

PLEASE USE PEN

BILL	MOTION (Include AMENDMENT #)	AYE	NO
SB38	Amendment .001	✓	
SB38	Due pass as amended (concure)	✓	
SB211	Due pass (concure)		✓
SB218	Due pass (concure)	✓	
SB224	Due pass (concure)	✓	
SB294	Due pass (concure)	✓	
SB326	Due pass (concure)	✓	
SB361	To Table	✓	
SB419	Due pass (concure)		✓
SB443	Amendment .001	✓	
SB443	Due pass as amended (concure)	✓	
SB459	Due pass (concure)	✓	

BILL	MOTION (Include AMENDMENT #)	AYE	NO
SB488	Due Pass (concure)	✓	
SB490	Amendment .001.001	✓	
SB490	Due (concure)	✓	
SB499	Due/concure AS amended	✓	
SB499	Amendment 001.001	✓	
SB499	To Table		✓

I authorize my vote to be matched with that of Rep. J. Hinkle for any amendments proposed on this date.

Rep. Caleb Hinkle

(Signature) (Print Name) (Meeting Date)

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

AUTHORIZED COMMITTEE PROXY 68TH LEGISLATIVE SESSION

I request to be excused from the Judiciary Committee.

I desire to leave my proxy vote with Rep. Ler.

PLEASE USE PEN

BILL	MOTION (Include AMENDMENT #)	AYE	NO
SB38	Am 2.1	X	
SB38		X	
SB211			X
SB218		X	
SB294		X	
SB326			X
SB361		X	
SB419		X	
SB443	Am 2.1	X	
SB443		X	
SB459			X
SB488		X	

BILL	MOTION (Include AMENDMENT #)	AYE	NO
SB490	Am 1.1	X	
SB490		X	
SB499	Am 1.1	X	
SB499	Table	~~X~~	X
SB499		X	

I authorize my vote to be matched with that of Rep. _____ for any amendments proposed on this date.

Rep. _____ Jodee Etchart 4/5/2023

(Signature) (Print Name) (Meeting Date)

WITNESS STATEMENT

SB333 - Steve White Testimony / Page 1

The US Department of Transportation Federal Aviation Agency (FAA), established in 1967 following the 1938 establishment of the Civil Aeronautics Authority, has oversight of the entire national airspace system (NAS). In § 333 of the FAA Modernization and Reform Act of 2012 (Public Law No. 112-95), Congress directed the Secretary to determine whether UAS operations posing the least amount of public risk and no threat to national security could safely be operated in the National Airspace System (NAS) and if so, to establish requirements for the safe operation of these systems in the NAS. Thus, UAS are aircraft now subject to regulation by the FAA to ensure the safety of flight and safety of people and property on the ground.

The FAA argues that it "has authority to regulate aircraft in U.S. Airspace" at any altitude because Federal law states that the FAA "shall develop plans and policy for the use of the navigable airspace and assign by regulation or order the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. 49 U.S.C. § 40103(b)(1).

The FAA can regulate airspace below 500 feet despite jurisdictional limitations because another federal law gives the FAA the authority to prescribe "regulations and minimum standards for other practices, methods and procedure the [FAA] finds necessary for safety in air commerce and national security." 49 U.S.C. § 44701(a). Under this section, the FAA regulates amateur rockets, motorized paragliders, and other vehicles below 500 feet.

In the **1946 United States v. Causby** Supreme Court decision (It involved large military aircraft flying 83 feet above the farmer's property, and killing his chickens) put forth two key principles regarding airspace below the MSA. First, landowners have "*exclusive control of the immediate reaches of the enveloping atmosphere.*" Second, landowners own at least as much of the space above the ground as they can occupy or use in connection with the land.

Ultimately, the FAA regulates all navigable airspace, because it must prescribe regulations "**on the flight of aircraft for navigating, protecting, and identifying aircraft**" and "**protecting individuals and property on the ground**." 49 U.S.C. § 40103(b)(2).

SUMMARY: As per the 'FAA Statement' (Page 2), state and local governments are not permitted to regulate any UAS flight paths or altitudes. **I am respectfully asking that the House Judiciary Committee table SB333.**

Federal Aviation Administration

Contact Us

Federal Aviation Administration Press Office
800 Independence Avenue, SW
Washington, DC 20591
United States

FAA Statement–Federal vs. Local Drone Authority

Friday, July 20, 2018

Congress has provided the FAA with exclusive authority to regulate aviation safety, the efficiency of the navigable airspace, and air traffic control, among other things. State and local governments are not permitted to regulate any type of aircraft operations, such as flight paths or altitudes, or the navigable airspace.

However, these powers are not the same as regulation of aircraft landing sites, which involves local control of land and zoning. Laws traditionally related to state and local police power – including land use, zoning, privacy, and law enforcement operations – generally are not subject to federal regulation.

Cities and municipalities are not permitted to have their own rules or regulations governing the operation of aircraft. However, as indicated, they may generally determine the location of aircraft landing sites through their land use powers.

In the context of Unmanned Aircraft Systems (UAS) – popularly called "drones"— the Department of Transportation's UAS Integration Pilot Program (IPP), directed by the President, will provide the FAA with insight on how to best involve local jurisdictions in the integration of UAS into the airspace in a way that also alleviates their concerns. On May 9, the Secretary of Transportation announced the selection of 10 state, local, and tribal governments as participants in the pilot program. These entities will partner with private sector participants to safely explore the further integration of drone operations. We're looking forward to working with the IPP participants as we look to the future.

Source: https://www.faa.gov/newsroom/faa-statement-federal-vs-local-drone-authority

MCA Sections Related to UAS Operations (plus SB219 / 2023):

7-1-111. Powers denied. A local government unit with self-government powers is prohibited from exercising the following:

(20) any power to enact an ordinance governing the private use of an unmanned aerial vehicle in relation to a wildfire;

45-5-223. Surreptitious visual observation or recordation -- place of residence -- public place -- exceptions. (1) A person commits the offense of surreptitious visual observation or recordation in a place of residence if the person purposely or knowingly hides, waits, or otherwise loiters in person or by means of a remote electronic device within or in the vicinity of a private dwelling house, apartment, or other place of residence for the purpose of:

(a) watching, gazing at, or looking upon any occupant in the residence in a surreptitious manner without the occupant's knowledge; or

(b) by means of an electronic device, surreptitiously observing or recording the visual image of any occupant in the residence without the occupant's knowledge.

46-5-109. Limitations on unmanned aerial vehicles. (1) In any prosecution or proceeding within the state of Montana, information from an unmanned aerial vehicle is not admissible as evidence unless the information was obtained:

(a) pursuant to the authority of a search warrant;

(b) in accordance with judicially recognized exceptions to the warrant requirement; or

(c) during the investigation of a motor vehicle crash scene that occurs on or involves a public roadway.

76-13-214. Obstruction of aerial wildfire suppression effort -- penalty -- exceptions. (1) A person may not obstruct, impede, prevent, or otherwise interfere with a lawful aerial wildfire suppression response by a state or local government effort by any means, including by the use of an unmanned aerial vehicle system.

SENATE BILL NO. 219 INTRODUCED BY W. CURDY (modifying 76-13-214)

A BILL FOR AN ACT ENTITLED: **"AN ACT REVISING WILDFIRE SUPPRESSION LAWS; PROVIDING DEFINITIONS REGARDING UNMANNED AERIAL VEHICLES AND WILDFIRE SUPPRESSION ACTIVITIES; REVISING THE OFFENSE OF OBSTRUCTION OF WILDFIRE SUPPRESSION ACTIVITIES"**

WITNESS STATEMENT

April 4th, 2023

To the good representatives of the House Judiciary Committee: Chair Regier, Vice Chair Ler, Vice Chair Bishop, Rep. Abbott, Rep. Carlson, Rep. Deming, Rep. Duram, Rep. Etchart, Rep. France, Rep. Hawk, Rep. J. Hinkle, Rep. C. Hinkle, Rep. Howell, Rep. Kmetz, Rep. Knudsen, Rep. Mitchell, Rep. Rusk, Rep. Sheldon-Galloway, Rep. Smith, Rep. Zephyr,

Thank you for taking the time to read this letter as you juggle so many competing demands for your attention. We appreciate that your perspective as citizen-legislators allows constituents like us to be better heard and understood.

We are landowners who live, work, and ranch in coal country. We are deeply concerned about the impacts to our rights, our freedoms, and our livelihoods if SB 392 were passed. This bill would undermine our ability to seek justice under the law by forcing landowners to cover legal expenses for coal corporations or state agencies if our legal challenges fell short.

Going to court over land and water disputes with corporations is already an intimidating and costly endeavor for any landowner. No one takes on a lawsuit such as this lightly, and the financial risks and burdens are already extremely high. Most Montanans can barely afford the substantial legal costs incurred as plaintiffs currently. However, circumstances arise where seeking justice through litigation is the only option available to protect one's water, land, property, and livelihood. In other words, it is never the first remedy reached for - far from it - and always a last resort.

If passed, SB 392 would have a chilling effect on landowners, many of us ranchers and ag producers whose operations pre-date the coal companies, forcing many to simply stand by and allow damage to their property due to the unfair financial risk involved. A basic tenet of our justice system is that everyone has the right to access our courts to mediate harm done to them - regardless of their financial status - and SB 392 would undermine this fundamental right and freedom.

Property owners adjacent to coal development often act as a first line of defense against damages to irreplaceable aquifers and other resources vital to the prosperity of rural communities. If us landowners are silenced by the intimidating threat of enormous financial burdens, damages to our water and land may never be remedied or addressed before snowballing into larger catastrophes that impact entire regions of Montana and, eventually, state taxpayers who may be left picking up the tab.

This bill is also unnecessary. Under current law, plaintiffs would be obligated to pay attorney's fees if they lost their legal challenges and acted in bad faith. That is fair and provides the proper safeguard to prevent frivolous lawsuits.

We are surprised and disappointed that legislation so hostile to the rights of land-owning Montanans and so friendly to corporations has gained any traction within a citizen-led legislature. We are simply asking to keep the status quo and retain the chance to protect our property rights. We are counting on this committee to do the right thing and support rural landowners who simply want to have fair access to our justice system in the event of unresolved damage to our land, water, or property.

Please do right by your constituents and vote no on SB 392.

Thank you for your time, service, and consideration.

Sincerely,

Clint McRae
Rocker six Cattle Co
Rosebud Creek, south of Colstrip, MT

Jeanie Alderson
Bones Brothers Ranch
Birney, MT

Debra Duben
Landowner
Roundup, MT

Nancy and Jack Carrel
FL Ranch
Birney, MT

My Green Earth, LP
Shepherd, MT

John H. Bailey
Landowner and Rancher
Colstrip, MT

Barbara Needham
Landowner and Rancher
Rosebud Creek, south of Colstrip, MT

Mark Fix
Rancher and landowner
Miles City, MT

Kevin D. Peterson
Landowner
Roundup, MT

Katherine Nilson
Landowner and Rancher
Roundup, MT

Sally and George H. Weaver
Landowners
Roundup, MT

Ellen Pfister
Landowner and retired producer
Shepherd, MT

Steve Charter
Landowner and Rancher
Shepherd, MT

Dale Wallace
Landowner
Roundup, MT

Russell Bossard
Landowner
Roundup, MT

Jean Lemire Dahlman and Floyd Dahlman
Dahlman Ranch, Inc
Forsyth, MT

Ronald W. and Grace Enzenbacher
Landowners
Roundup, MT

Pat and Maureen Thiele
Landowners
Roundup, MT

Tom Baratta
Landowner
Roundup, MT

WITNESS STATEMENT

Good morning, Madam Chair and members of the committee. My name is Steve Charter [C-H-A-R-T-E-R]. I ranch in the Bull Mountains, near Shepherd, Montana, above and adjacent to an underground coal mine.

We have had a well crucial to our livestock operations critically damaged by mining. Although companies are obligated to replace damaged water in like kind and quantity, the temporary replacement water DEQ required the mine to provide is only half of what my cattle need in hot weather. I have had to reduce my stocking rate, resulting in significant profit loss. I have been hoping that we can sort this out without litigation. Going to court is extremely expensive. However, if my water is not replaced to meet the needs of my operation in the near future, going to court might be my only option.

If SB 392 were to pass, that option would be off the table. This bill applies to large sections of statute, including 82-4-253, the chapter on suits for damage to water supply. This would make it practically impossible for any rancher to be able to go to court to defend their water rights. While I feel confident in my case, the risk of being on the hook for company legal fees in the event that I lost in court would prohibit me from taking the chance. With the expensive attorneys that coal companies have the resources to hire, I would be bankrupted if I had to take that on. This would make it impossible to have a ranching operation that will be profitable long term.

This bill is not fair. This bill gives government and industry more power and takes it away from individual people. I respectfully ask you to vote no on SB 392.

And with your permission Madam Chair, I would like to hand out a letter from 23 other landowners in coal country opposing this bill.

WITNESS STATEMENT

April 2, 2023

To the good representatives of the House Judiciary Committee:
Chair Regier, Vice Chair Ler, Vice Chair Bishop, Rep. Abbott, Rep. Carlson, Rep. Deming, Rep. J. Hinkle, Rep. C. Hinkle, Rep. Howell, Rep. Kmetz. Rep. Knudsen, Rep. Mitchell, Rep. Rusk, Rep. Sheldon-Galloway, Rep. Smith, Rep. Zephyr,

As a resident of Montana, I appreciate and thank you for taking time to read our letter and listen to our concerns. I know there are many things more important on your plate, but this issue is critical to us as residents of the Hidden Springs subdivision in Mussellshell County in the town of Roundup. We enjoy our lifestyle in the Bull Mountains in this wonderful state and hope to be able to live here for a long time more.

We are retired landowners who live in coal country. We live very close to the Signal Peak Mine. We are deeply concerned about the impacts to our rights and our lifestyle, and our freedoms if SB 392 were passed. This bill would undermine our ability to seek justice under the law by forcing landowners to cover legal expenses for coal corporations or state agencies if our legal challenges fell short. Our major concerns is with our water rights. If we lose our water and our well, our homes are uninhabitable and our property values would be nil.

Going to court over land and water disputes with large corporations is already a very intimidating and costly endeavor for any landowner. No one takes on a lawsuit such as this lightly, and the financial risks and burdens are already extremely high. Most Montanans can barely afford the substantial legal costs incurred as plaintiffs currently. However, circumstances arise where it would be extremely necessary or seek justice through litigation if we would lose water because of actions by the mine or any government agency. Litigation is never the first remedy sought, but would be our last resort if we lost our water.

A basic tenet of our justice system is that everyone has the right to access our courts to mediate harm done to them, regardless of their financial status. We are just residents of an area near the coal mine. If SB 392 passes, we would all be scared of what could happen next week, or tomorrow to our water as we have no control over whatever the local mine is doing. And we would be in no position to take on the mine or the local agencies as their pocketbooks are much larger than ours. Their lawyers are fancier than ours and would have an advantage over us in the courtroom. Hardly a fair playing field. Most of us here in Roundup are simple retirees, enjoying the rural surroundings of Mussellshell County.

As property owners adjacent to coal development, we are aware of changes at the mine. We monitor our wells for changes in volume and quality of water. We are the first line of defense against damages to irreplaceable aquifers and other resources vital to the prosperity of rural communities. If we are silenced because of the passing of SB 392 by the intimidating threat of enormous legal bills or damages to our water and land, the actual damages may never be remedied or addressed before becoming a larger

WITNESS STATEMENT

catastrophe that impacts entire regions of Montana, and, eventually, state taxpayers who may be left picking up the tab.

The bill seems redundant and unnecessary as well. Under current law, plaintiffs would be obligated to pay their own attorneys fees if they lost their legal challenges and acted in bad faith. That is fair and provides the proper safeguard to prevent frivolous lawsuits.

We are counting on this committee to do the right thing and support rural landowners who simply want to have fair access to our justice system in the event of unresolved damage to our land, water, or property. Quite frankly, we are surprised and disappointed that legislation so hostile to the rights of simple land-owning Montanans and so friendly to large corporations has gained such traction within a citizen-led legislature.

We are simply asking to keep the status quo and retain the chance to keep and protect our property and water rights.

Please, do not force us out of our homes. PLEASE, do right by your constituents and fellow Montanans and vote no on SB 392.

Thank you for your consideration and your service to a safe and environmentally friendly Montana.

Sincerely,

George and Sally Weaver
99 Hidden Springs Road
Roundup, MT 59072

WITNESS STATEMENT

Madam Chair and members of the Committee:

Senate bill No. 392 should not be passed. It goes directly against the Surface Mining and Reclamation Act of l977's enforcement scheme. As a federal law in this area, that act has primacy, which the State of Montana swore to enforce in order to receive federal funding to administer its coal reclamation act in compliance with the federal act. This would weaken Montana's act to be less in strength in its protection of Montana citizens than the Federal Act.

The proposal of SB 392 amends language directly taken from the Federal Act and put in our law, which gives the judge the discretion to determine what is just in the determination of court costs. Considering the discrepancy between parties in this kind of case, it gives the judge the option to rule according to the circumstances of the case.

The intent of this bill is to further weaken a citizen's position by taking a case like this out of the private attorney general doctrine.

This bill would put the final nail in the coffin of being able to question either DEQ or the coal industry. The last resort for justice is filing a lawsuit, an effort undertaken with a sinking heart, and now with an even heavier financial burden as a result of SB392.

Please do not pass this bill.

Submitted by

Ellen Pfister

epg1889@gmail.com

PO Box 330

Shepherd, MT 59079

WITNESS STATEMENT

April 2, 2023

To the good representatives of the House Judiciary Committee:
Chair Regier, Vice Chair Ler, Vice Chair Bishop, Rep. Abbott, Rep. Carlson, Rep. Deming, Rep. Durham, Rep. Etchart, Rep. France, Rep Hawk, Rep. J. Hinkle, Rep. C. Hinkle, Rep. Howell, Rep. Kmetz, Rep. Knudsen, Rep. Mitchell, Rep. Rusk, Rep. Sheldon-Galloway, Rep. Smith, Rep. Zephyr

We appreciate and thank you for your time to listen to our concerns as landowners near the Signal Peak Mine (SPE) in Musselshell County, MT.

After living in the area for 20 years we are very concerned that the passage of SB 392 could have a huge negative effect on our rights and freedoms.

One of our biggest concerns as landowners living approximately 1 mile from the SPE permit boundry is the possibility that SPE could at some point damage or destroy our water supply. As we all know water is the key to life and we are fortunate to have it.

Everyone has an opinion on how the aquafers work yet no one can prove it.
If this resource is destroyed or diminished by SPE who will burden the cost and the labor to restore it?

Under current law, plantiffs would be obligated to pay attorney's fees if they lost their challenges and acted in bad faith, why abolish or amend it? It is fair and provides the proper safeguard to prevent frivilous lawsuits.

Going to court as a landowner over any kind of water issues would be an expensive endeavor even under the current law. An endeavor that would not be undertaken friviously. The proposed changes seem to want to intimidate the common folk into not fighting for their water rights knowing that they could be burdened with legal costs of opposing corporations. Please do not force landowners to have to stand by and allow damage to our properties due to the unfair risk involved.

A basic tenant of our justice system is that everyone has the right to access our courts to mediate harm done to them-regardless of their financial status.

We are asking the committee to keep the status quo and retain the chance to protect our property rights.

Please support rural landowners who want to have fair access to our justice system.
Please do right by your constituents and vote no on SB 392.

Thank you for service and consideration to keeping Montana a safe, fair and environmentally healthy state to live and work in.

Mike and Debbie Duben
707 Fattig Cr Rd
Roundup, MT

WITNESS STATEMENT

Good morning Madam Chair and members of the Committee

I rise to testify in opposition to SB 392

My background

Graduated UM Law School 1985

Appointed Assistant United States Attorney (AUSA) January 2, 1986-worked in Montana United States Attorney's Office for next 30 years.

As AUSA I defended the United States ~~Fish and Wildlife~~ Forest Service (USFS), United States Fish and Wildlife Service (USFWS), Bureau of Reclamation, and the Environmental Protection Agency (EPA) in lawsuits brought by environmental groups like Earth Justice, Friends of the Wild Swan and others. Those environmental groups claimed harm by government decisions on timber sales, building projects, regulation enforcement, Clean Water Act and Endangered Species Act decisions and enforcement.

I opened my own law firm 6 years ago and have represented private Montana citizens and businesses on the other side of the coin-bringing environmental claims against the USFS, USFWS and mining companies. I also represent an Idaho Native American Tribe in several cases in Montana federal court filing briefs and making arguments in support of USFS timber sale decisions. My opponents are environmental groups.

I relate my experience because it informs my opinion and testimony that SB 392 is unnecessary and unfair.

Unnecessary because:

In ~~33~~ 6 years of practicing law in Montana on both sides of environmental law litigation, I have never been involved in a case brought by an environmental group that I argued was frivolous or in bad faith or was claimed by my opponent to be frivolous or in bad faith. More importantly, I have never been involved in a case where an environmental claim by either party was determined by a court to be frivolous or in bad faith.

Montana Rule of Civil Procedure 11 requires lawyers to bring lawsuits in good faith and provides sanctions against lawyers found to bring a lawsuit in bad faith.

Unfair because:

Coal companies will never be intimidated by the threat of having to pay a Montana landowner's attorney fees. It is simply not part of these giant companies' business decisions to follow its DEQ permit requirements or force a rancher to sue them to gain compliance.

On the other hand, aside from a few billionaires, Montana landowners are completely intimidated and cannot take the financial risk of paying coal company attorney fees in order to challenge their compliance with environmental laws or private agreements relating to protecting their land and water.

SB 392 tilts the playing field drastically in favor of the coal companies and against Montana landowners trying to protect their land and water. I urge you to vote no on SB 392.

04/05/23 JUH ONLINE TESTIMONY LIST					
SB	376	Proponent	Stephanie Baucus	Billings, MT	Schulers and Slavens
SB	376	Proponent	Dan Brooks	Billings, MT	Billings Chamber of Commerce
SB	376	Proponent	Greg Sullivan	Bozeman, MT	City of Bozeman
SB	376	Opponent	Ross Keogh	Missoula, MT	NA
SB	376	Opponent	Jeffrey Yates	Bozeman, MT	Triple Tree Ranch Owners' Association
SB	376	Opponent	Tom Bourguignon	Missoula, MT	NA
SB	376	Opponent	Randall Snyder	Bigfork, Montana	NA
SB	376	Opponent	Peter Van Tuyn	Hamilton, MT	NA
SB	376	Opponent	Stuart Doggett	Helena, MT	MT Land Title Association
SB	397	Opponent	Colby Williams	Washington, DC	Security Industry Association (SIA)
SB	469	Proponent	Leslie Halligan	Missoula, MT	NA
SB	392	Opponent	Caryn Miske	Missoula, MT	Sierra Club

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

VISITOR REGISTER

JUDICIARY COMMITTEE

DATE 4/5 BILL NO: SB445

SPONSOR(S): Sen Bogner

SHORT TITLE: _____

Please leave prepared testimony with the clerk.
Witness Statement forms are available if you care to submit written testimony.

PLEASE PRINT PLEASE PRINT PLEASE PRINT PLEASE PRINT

Name	Representing	Support	Oppose	Informt'l
Paula Stannard	DPHHS			X
Matt Kunda	NAMI Montana	X		
Brian Thomson	MCAA	X		

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

VISITOR REGISTER

JUDICIARY COMMITTEE

DATE 4/5 BILL NO: SB392

SPONSOR(S): Sen Fitzpatrick

SHORT TITLE: _____

Please leave prepared testimony with the clerk.
Witness Statement forms are available if you care to submit written testimony.

PLEASE PRINT PLEASE PRINT PLEASE PRINT PLEASE PRINT

Name	Representing	Support	Oppose	Informt'l
Steve Charter	~~Self~~ self		X	
Kris McLean	self		X	
PAT THIELE	BMLA		X	
Bronya Lechtman	Northern Plains Resource Council		X	
Dave Galt	N, T, E, C,	X		
Derf Johnson	MEIC		X	
Angie Colamaria	DEQ			X
George H. Harris	MT Coal Council	X		
Jon Metropoulos	Westmoreland	X		
Shelby DeMars	MT Assoc. of Oil, Gas + Coal Counties	X		

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

VISITOR REGISTER

JUDICIARY COMMITTEE

DATE 4/5 BILL NO: SB333

SPONSOR(S): Sen Hertz

SHORT TITLE: _____

Please leave prepared testimony with the clerk.
Witness Statement forms are available if you care to submit written testimony.

PLEASE PRINT PLEASE PRINT PLEASE PRINT PLEASE PRINT

Name	Representing	Support	Oppose	Informt'l
Steve White	Self		X	
Ben Spencer	NAMIC Pronsa		X	
Sam Sill	MAR		X	
Peggy Trenk	TSRA		X	
Cory Shaw	MBIA		X	
Greg Van Horssen	State Farm		X Amd	
Steve Cape	CHSJ	X		
Mark Lambrecht	MECA	X		
Angela Medoles	ARIA		X and	
Chuck Denowh	UPOM	X		
Brian Thompson	MSPOA BN MARLS		X	

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

VISITOR REGISTER

JUDICIARY COMMITTEE

DATE 4/5 BILL NO: SB 397

SPONSOR(S): Sen Bogner

SHORT TITLE: _____

Please leave prepared testimony with the clerk.
Witness Statement forms are available if you care to submit written testimony.

PLEASE PRINT PLEASE PRINT PLEASE PRINT PLEASE PRINT

Name	Representing	Support	Oppose	Informt'l
Steve Carr	CJSJ	X		
Kendall Cotton	Frontier Institute	X		
E. J. Redding	SIA		X	
Laurie Bakri	DOJ MVD			X
Liam McCollum	AFP-MT	X		
Brian Thompson	MSPOA		X	

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

4

VISITOR REGISTER

JUDICIARY COMMITTEE

DATE 4/5 BILL NO: SB423

SPONSOR(S): Sen Bogner

SHORT TITLE: _____

Please leave prepared testimony with the clerk.
Witness Statement forms are available if you care to submit written testimony.

PLEASE PRINT PLEASE PRINT PLEASE PRINT PLEASE PRINT

Name	Representing	Support	Oppose	Informt'l
ROGER A. HAGAN	MT AM LEGION MT NG ASSNS	X		
ED BEALL	SELF	X		
Maryann Dunwell	SD 42	X		
Dr. Jennifer Preble	AFSP	X		
Jason Swant	PPSA	X		
Michael Hossfeld	Self	X		
Rebecca Squires	Self	X		
Matt Kuntz	NAMI Montana	X		

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

3

VISITOR REGISTER

JUDICIARY COMMITTEE

DATE 4/5 BILL NO: SB 396

SPONSOR(S): Sen Bogner

SHORT TITLE: _____

Please leave prepared testimony with the clerk.
Witness Statement forms are available if you care to submit written testimony.

PLEASE PRINT PLEASE PRINT PLEASE PRINT PLEASE PRINT

Name	Representing	Support	Oppose	Informt'l
Dave Capp	CAST	X		

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

VISITOR REGISTER

JUDICIARY COMMITTEE

DATE 4/5 BILL NO: SB339

SPONSOR(S): Sen Bogner

SHORT TITLE: _____

Please leave prepared testimony with the clerk.
Witness Statement forms are available if you care to submit written testimony.

PLEASE PRINT PLEASE PRINT PLEASE PRINT PLEASE PRINT

Name	Representing	Support	Oppose	Informt'l

No Visitors Registered into this Committee Meeting

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

1

VISITOR REGISTER

JUDICIARY COMMITTEE

DATE 4/5 BILL NO. SB 376

SPONSOR(S): Sen Bogner

SHORT TITLE: _____

Please leave prepared testimony with the clerk.
Witness Statement forms are available if you care to submit written testimony.

PLEASE PRINT PLEASE PRINT PLEASE PRINT PLEASE PRINT

Name	Representing	Support	Oppose	Informt'l
Bill Gower	MT Land Title Ass		X	
Pat Keim	Self		X	
Tom Sin	MAR		X	
Jayme Bowditch	MAR		X	
Peggy Trenk	TSRA		X	
Cory Shaw	MBIA		X	
Ross Keogh	Self		X	
Ella Smith	MT Advocates for Children	X		
Cary Hegreberg	MT Bankers		X	
Alanah Griffith	Self		X	
Andy Skinner	Self		X	
Joe Ki	HOA TOK		V	
Randy Krogh	HOA TOK		X	
Claire Olson	MPA		X	
Aimee Grmoljez	Self		X	

ADDITIONAL DOCUMENTS

Montana Code Annotated 2017

THE CONSTITUTION OF THE STATE OF MONTANA
ARTICLE II. DECLARATION OF RIGHTS
Part II. DECLARATION OF RIGHTS

Ex Post Facto, Obligation Of Contracts, And Irrevocable Privileges

Section 31. Ex post facto, obligation of contracts, and irrevocable privileges. No ex post facto law nor any law impairing the obligation of contracts, or making any irrevocable grant of special privileges, franchises, or immunities, shall be passed by the legislature.

AN ACT GENERALLY REVISING STATUTES RELATED TO LEVEL DESIGNATIONS FOR SEXUAL OFFENDERS; PROVIDING DEFINITIONS; REQUIRING ADDITIONAL INFORMATION FROM OFFENDERS REGARDING ELECTRONIC AND COMMUNICATIONS DATA AND PROFESSIONAL LICENSES; REQUIRING NOTICE WHEN AN OFFENDER IS LEAVING THE STATE; PROVIDING OPPORTUNITIES FOR CERTAIN OFFENDERS TO BE REMOVED FROM THE REGISTRY; PROVIDING NOTICE REQUIREMENTS FOR PSYCHOSEXUAL EVALUATIONS; AND AMENDING SECTIONS 46-23-502, 46-23-504, 46-23-505, 46-23-506, 46-23-508, AND 46-23-509, MCA.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 46-23-502, MCA, is amended to read:

"**46-23-502. Definitions.** As used in Title 45, chapter 5, part 3 and parts 5 through 7, 46-18-255, and this part, the following definitions apply:

(1) "Department" means the department of corrections provided for in 2-15-2301.

(2) "Foreign offenses" means a conviction for a sexual offense involving any of the conduct listed in this section that was obtained under the laws of Canada, the United Kingdom, Australia, or New Zealand, or under the laws of any foreign country when the United States department of state, in its country reports on human rights practices, has concluded that an independent judiciary generally or vigorously enforced the right to a fair trial in that country during the year in which the conviction occurred.

~~(2)~~(3) "Mental abnormality" means a congenital or acquired condition that affects the mental, emotional, or volitional capacity of a person in a manner that predisposes the person to the commission of one or more sexual offenses to a degree that makes the person a menace to the health and safety of other persons.

~~(3)~~(4) "Municipality" means an entity that has incorporated as a city or town.

~~(4)~~(5) "Personality disorder" means a personality disorder as defined in the fourth edition of the

Diagnostic and Statistical Manual of Mental Disorders adopted by the American psychiatric association.

~~(5)~~(6) "Predatory sexual offense" means a sexual offense committed against a stranger or against a person with whom a relationship has been established or furthered for the primary purpose of victimization.

~~(6)~~(7) "Registration agency" means:

(a) if the offender resides in a municipality, the police department of that municipality; or

(b) if the offender resides in a place other than a municipality, the sheriff's office of the county in which the offender resides.

~~(7)~~(8) (a) "Residence" means the location at which a person regularly resides, regardless of the number of days or nights spent at that location, that can be located by a street address, including a house, apartment building, motel, hotel, or recreational or other vehicle.

(b) The term does not mean a homeless shelter.

~~(8)~~(9) "Sexual offender evaluator" means a person qualified under rules established by the department to conduct psychosexual evaluations of sexual offenders and sexually violent predators.

~~(9)~~(10) (a) "Sexual offense" means~~:~~ any violation, attempt, solicitation, or conspiracy to commit a violation, or flight after the attempt or commission of the following:

~~(a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-301 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-302 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-303 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-502 (if the offender is a professional licensed under Title 37 and commits the offense during any treatment, consultation, interview, or evaluation of a person's physical or mental condition, ailment, disease, or injury), 45-5-502 (3) (if the victim is less than 16 years of age and the offender is 3 or more years older than the victim), 45-5-503 (1), (3), or (4), 45-5-504 (2)(c), 45-5-504 (3) (if the victim is less than 16 years of age and the offender is 4 or more years older than the victim), 45-5-507 (if the victim is less than 18 years of age and the offender is 3 or more years older than the victim or if the victim is 12 years of age or younger and the offender is 18 years of age or older at the time of the offense), 45-5-508, 45-5-601 (3), 45-5-602 (3), 45-5-603 (1)(b), (2)(b), or (2)(c), 45-5-625, 45-5-704, or 45-5-705 ; or~~

(i) 45-5-301, Unlawful restraint, if the victim is less than 18 years of age and the offender is not a parent of the victim;

(ii) 45-5-302, Kidnapping, if the victim is less than 18 years of age and the offender is not a parent of the victim;

(iii) 45-5-303, Aggravated kidnapping, if the victim is less than 18 years of age and the offender is not a parent of the victim;

(iv) 45-5-502(2)(c) and (3), Sexual assault;

(v) 45-5-503, Sexual intercourse without consent;

(vi) 45-5-504(2)(c) and (3), Indecent exposure;

(vii) 45-5-507, Incest, if the victim is less than 18 years of age and the offender is 3 or more years older than the victim, or if the victim is 12 years of age or younger and the offender is 18 years of age or older at the time of the offense;

(viii) 45-5-508, Aggravated sexual intercourse without consent;

(ix) 45-5-601(2)(b), (3), and (4) Prostitution;

(x) 45-5-602(3) and (4), Promoting prostitution;

(xi) 45-5-603, Aggravated promotion of prostitution;

(xii) 45-5-622(2)(b)(ii), Endangering welfare of children;

(xiii) 45-5-625, Sexual abuse of children;

(xiv) 45-5-627(1)(a), Ritual abuse of minor;

(xv) 45-5-704, Sexual servitude;

(xvi) 45-5-705, Patronizing victim of sexual servitude; or

~~(b)~~(xvii) any violation of a law of another state, a tribal government, ~~or~~ the federal government, or the military or a foreign entity that is reasonably equivalent to a violation listed in subsection ~~(9)(a)~~ (10)(a)(i) through (10)(a)(xvi) or for which the offender was required to register as a sexual offender after an adjudication or conviction.

(b) This term does not include the exceptions provided for in 45-5-501, 45-5-502, and 45-5-503.

~~(10)~~(11) "Sexual or violent offender" means a person who has been convicted of or, in youth court, found to have committed or been adjudicated for a sexual or violent offense.

~~(11)~~(12) "Sexually violent predator" means a person who:

(a) has been convicted of or, in youth court, found to have committed or been adjudicated for a

sexual offense and who suffers from a mental abnormality or a personality disorder that makes the person likely to engage in predatory sexual offenses; or

(b) has been convicted of a sexual offense against a victim 12 years of age or younger and the offender is 18 years of age or older.

~~(12)~~(13) "Transient" means an offender who has no residence.

~~(13)~~(14) "Violent offense" means:

(a) any violation of or attempt, solicitation, or conspiracy to commit a violation of:

(i) 45-5-102, Deliberate homicide;

(ii) 45-5-103, Mitigated deliberate homicide;

(iii) 45-5-202, Aggravated assault;

(iv) 45-5-206 (third or subsequent offense), Partner or family member assault;

(v) 45-5-210(1)(b), (1)(c), or (1)(d), Assault on a peace officer or judicial officer;

(vi) 45-5-212, Assault on a minor;

(vii) 45-5-213, Assault with weapon;

(viii) 45-5-215, Strangulation of partner or family member;

(ix) 45-5-302 (if the victim is not a minor), Kidnapping;

(x) 45-5-303 (if the victim is not a minor), Aggravated kidnapping;

(xi) 45-5-401, Robbery;

(xii) 45-6-103, Arson; or

(xiii) 45-9-132, Operation of unlawful clandestine laboratory; or

(b) any violation of a law of another state, a tribal government, ~~or~~ the federal government, or the military or a foreign entity reasonably equivalent to a violation listed in subsection ~~(13)(a)~~ (14)(a)."

Section 2. Section 46-23-504, MCA, is amended to read:

"**46-23-504. Persons required to register -- procedure.** (1) Except as provided in 41-5-1513 and 45-5-503(5), a sexual or violent offender:

(a) shall register immediately upon conclusion of the sentencing hearing if the offender is not sentenced to confinement or is not sentenced to the department and placed in confinement by the department;

(b) must be registered as provided in 46-23-503 at least 10 days prior to release from confinement if sentenced to confinement or sentenced to the department and placed in confinement by the department;

(c) shall register within 3 business days of entering a county of this state for the purpose of residing or setting up a temporary residence for 10 days or more or for an aggregate period exceeding 30 days in a calendar year; and

(d) who is a transient shall register within 3 business days of entering a county of this state.

(2) Registration under subsection ~~(1)(a), (1)(c), or (1)(d)~~ (1) must be with the appropriate registration agency. If an offender registers with a police department, the department shall notify the sheriff's office of the county in which the municipality is located of the registration. The probation officer having supervision over an offender required to register under subsection (1)(a) shall verify the offender's registration status with the appropriate registration agency.

(3) At the time of registering, the offender shall sign a statement in writing giving the information required by subsections (3)(a) through ~~(3)(h)~~ (3)(k) and any other information required by the department of justice. The registration agency shall fingerprint the offender, unless the offender's fingerprints are on file with the department of justice, photograph the offender, and obtain a DNA sample from the offender. Within 3 days, the registration agency shall send copies of the statement, fingerprints, and photographs to the department of justice. The registration agency shall send the DNA sample to the department of justice for analysis and entry of the DNA record into the DNA identification index. The registration agency shall require an offender given a level 2 or level 3 designation to appear before the registration agency for a new photograph every year. The information collected from the offender at the time of registration must include:

(a) the name of the offender and any aliases used by the offender;

(b) the offender's social security number;

(c) the residence information required by subsection (4);

(d) the name and address of any business or other place where the offender is or will be an employee;

(e) the name and address of any school where the offender will be a student;

(f) the offender's driver's license number;

(g) the description, registration number or identifier, and license number of ~~any~~ all motor ~~vehicle~~

vehicles owned or operated by the offender; and

(h) ~~all of the offender's e-mail addresses and social media screen names.~~ The following information related to the offender's internet activity:

(i) all e-mail addresses used by the offender;

(ii) all instant message addresses and identifiers;

(iii) all other designations or monikers used for self-identification in internet communications or postings; and

(iv) all designations used by the offender for the purpose of routing or self-identification in internet communications, postings, or social media accounts;

(i) any passports held or used by the offender. The department or its designee shall make a photocopy of the passports.

(j) all telephone numbers and any other designations used by the offender for the purposes of routing or self-identification in telephonic communications, including but not limited to:

(i) all cellular telephone numbers;

(ii) all landline telephone numbers; and

(iii) all voice over internet protocol telephone numbers; and

(k) all professional licenses, including the licensing number, licensing agency, and any other identifying information about a professional license issued to the offender that authorizes the offender to engage in an occupation or carry out a trade or business.

(4) (a) If, at the time of registration, the offender regularly resides in more than one county or municipality, the offender shall register with the registration agency of each county or municipality in which the offender resides. If an offender resides in more than one location within the same county or municipality, the registration agency shall require the offender to provide all of the locations where the offender regularly resides and to designate one of them as the offender's primary residence.

(b) Registration of more than one residence pursuant to this section is an exception from the single residence rule provided in 1-1-215.

(5) A transient shall report monthly, in person, to the registration agency with which the transient registered pursuant to subsection (1)(d). The transient shall report on a day specified by the registration agency

and during the normal business hours of that agency. On that day, the transient shall provide the registration agency with the information listed in subsections (3)(a) through ~~(3)(h)~~ (3)(k). The registration agency to which the transient reports may also require the transient to provide the locations where the transient stayed during the previous 30 days and may stay during the next 30 days.

(6) (a) The department of justice shall mail a registration verification form:

(i) each 90 days to an offender designated as a level 3 offender under 46-23-509;

(ii) each 180 days to an offender designated as a level 2 offender under 46-23-509; and

(iii) each year to a violent offender or an offender designated as a level 1 offender under 46-23-509.

(b) If the offender is a transient, the department of justice shall mail the offender's registration verification form to the registration agency with which the offender last registered.

(c) The form must require the offender's notarized signature. Within 10 days after receipt of the form, the offender shall complete the form and return it to the registration agency where the offender last registered or, if the offender was initially registered pursuant to subsection (1)(b), to the registration agency in the county or municipality in which the offender is located. A sexual offender shall return the form to the appropriate registration agency in person, and at the time that the sexual offender returns the registration verification form, the registration agency shall take a photograph of the offender and collect a DNA sample if one has not already been collected. The registration agency shall send the DNA sample to the department of justice for analysis and entry into the DNA identification index.

(7) Within 3 days after receipt of a registration verification form, the registration agency shall provide a copy of the form and most recent photograph to the department of justice.

(8) The offender is responsible, if able to pay, for costs associated with registration. The fees charged for registration may not exceed the actual costs of registration. The department of justice may adopt a rule establishing fees to cover registration costs incurred by the department of justice in maintaining registration and address verification records. The fees must be deposited in the general fund.

(9) The clerk of the district court in the county in which a person is convicted of a sexual or violent offense shall notify the sheriff in that county of the conviction within 10 days after entry of the judgment."

Section 3. Section 46-23-505, MCA, is amended to read:

"**46-23-505. Notice of change of name or residence or student, employment, or transient status -- duty to inform -- forwarding of information.** (1) If an offender required to register under this part has a change of name or residence or a change in student, employment, or transient status, the offender shall within 3 business days of the change appear in person and give notification of the change to the registration agency with whom the offender last registered or, if the offender was initially registered under 46-23-504(1)(b), to the registration agency for the county or municipality from which the offender is moving. The registration agency shall require the offender to appear before the registration agency for a new photograph every year.

(2) If an offender required to register under this part is a transient, the offender shall provide written notification to the registration agency with which the offender last registered or, if the offender initially registered pursuant to 46-23-504(1)(b), shall provide notice within 3 business days to the registration agency in the county or municipality in which the offender resides.

(3) Within 3 business days after receipt of the information concerning the new name or residence or a change in the student, employment, or transient status, the registration agency shall forward the information to the department of justice, which shall forward a copy of the information and photograph to:

(a) in the event of a change in residence, the registration agency for the county to which the offender moves and, if the offender lives in a municipality, the registration agency for that municipality to which the offender moves;

(b) in the event of a change of name or of student, employment, or transient status, the registration agency of the appropriate county or municipality.

(4) If an offender who is required to register under this part is physically absent from the offender's county of residence for more than 10 consecutive days, the offender shall register in the county where the offender is physically located on the 11th day even if the offender claims to maintain a residence, as defined in 46-23-502, in that county. The offender shall register again in the offender's county of residence when the offender returns to that county.

(5) If an offender is required to register under subsection (4), the offender shall register in any subsequent county where the offender is present for more than 24 hours until the offender registers again in the offender's county of residence.

(6) In the event an offender will be absent from this state for more than 7 days, the offender shall provide notice with the information required under this section in person to the registering agency no later than 3 days before their scheduled travel. The registering agency shall forward the information to the department of justice, which shall then notify the provided jurisdiction."

Section 4. Section 46-23-506, MCA, is amended to read:

"**46-23-506. ~~Duration~~ Duty of registration -- duration, frequency, reduction, and relief.** (1) A sexual offender required to register under this part shall register for the remainder of the sexual offender's life, except as provided in subsection (3) or during a period of time during which the sexual offender is in prison.

(2) (a) A violent offender required to register under this part shall register for the 10 years following release from confinement or, if not confined following sentencing, for the 10 years following the conclusion of the sentencing hearing and after registering for 10 years, is automatically relieved of the duty to register unless convicted as provided in subsection (2)(b).

(b) If convicted during the 10-year period provided in subsection (2)(a) of failing to register or keep registration current or of a felony, the violent offender shall register for the remainder of the violent offender's life unless relieved of the duty to register as provided in subsection ~~(3)~~ (2)(e).

(c) When ~~an~~ a violent offender is relieved of the duty to register under subsection (2)(a), the department of justice shall remove the violent offender from the registry.

(d) Petitions for relief from registration under this part must be filed in the appropriate Montana district court. Orders or other documents granting relief from registration requirements that originated in other jurisdictions are not valid in Montana.

(e) Except as provided in subsection (5), at any time after 10 years of registration for a violent offender registered as provided in subsection (2)(b), a violent offender may petition the sentencing court or the district court for the judicial district in which the violent offender resides for an order relieving the violent offender of the duty to register. The petition must be served on the county attorney in the county where the petition is filed. Prior to a hearing on the petition, the county attorney shall mail a copy of the petition to the victim of the last offense for which the violent offender was convicted if the victim's address is reasonably available. The court shall consider any written or oral statements of the victim. The court may grant the petition

on finding that:

(i) the violent offender has remained a law-abiding citizen; and

(ii) continued registration is not necessary for public protection and that relief from registration is in the best interests of society.

(3) Except as provided in subsection ~~(5)~~ (7), at any time after 10 years of registration for ~~a violent offender registered as provided in subsection (2)(b) or~~ a level 1 sexual offender and at any time after 25 years of registration for a level 2 sexual offender, an offender may petition the sentencing court or the district court for the judicial district in which the offender resides for an order relieving the offender of the duty to register. The petition must be served on the county attorney in the county where the petition is filed. Prior to a hearing on the petition, the county attorney shall mail a copy of the petition to the victim of the last offense for which the offender was convicted if the victim's address is reasonably available. The court shall consider any written or oral statements of the victim. The court may grant the petition ~~upon~~ on finding that:

(a) the offender has ~~remained a law-abiding citizen~~ maintained a clean record during their period of registration; and

(b) continued registration is not necessary for public protection and that relief from registration is in the best interests of society.

(4) A level 3 sexual offender may have their period of registration reduced to 25 years if the sexual offender was adjudicated delinquent of an offense as a juvenile that required level 3 sexual offender registration and the sexual offender has maintained a clean record for 25 consecutive years.

(5) For the purposes of this section, the sexual offender has a clean record if, during the period of time in which the sexual offender was required to register as a sexual offender:

(a) the sexual offender was not convicted of any felony offense;

(b) the sexual offender was not convicted of any sexual offense;

(c) the sexual offender successfully completed, without revocation, any period of supervised release, probation, or parole; and

(d) the sexual offender has successfully completed an appropriate sexual offender treatment program.

~~(4)~~(6) The offender may move that all or part of the proceedings in a hearing under ~~subsection~~

subsections (2)(e) and (3) be closed to the public, or the judge may close them on the judge's own motion. If a proceeding under ~~subsection~~ subsections (2)(e) and (3) is closed to the public, the judge shall permit a victim of the offense to be present unless the judge determines that exclusion of the victim is necessary to protect the offender's right of privacy or the safety of the victim. If the victim is present, the judge, at the victim's request, shall permit the presence of an individual to provide support to the victim unless the judge determines that exclusion of the individual is necessary to protect the offender's right to privacy.

~~(5)~~(7) Subsection (3) does not apply to an offender who was convicted of:

(a) a violation of 45-5-503 if:

(i) the victim was compelled to submit by force, as defined in 45-5-501, against the victim or another; or

(ii) at the time the offense occurred, the victim was under 12 years of age;

(b) a violation of 45-5-507 if at the time the offense occurred the victim was under 12 years of age and the offender was 3 or more years older than the victim;

(c) a second or subsequent sexual or violent offense that requires registration; or

(d) a sexual offense and was designated as a sexually violent predator under 46-23-509."

Section 5. Section 46-23-508, MCA, is amended to read:

"**46-23-508. Dissemination of information.** (1) Information maintained under this part is confidential criminal justice information, as defined in 44-5-103, except that:

(a) the name and address of a registered sexual or violent offender are public criminal justice information, as defined in 44-5-103; and

(b) the department of justice or the registration agency shall release any offender registration information that it possesses relevant to the public if the department of justice or the registration agency determines that a registered offender is a risk to the safety of the community and that disclosure of the registration information that it possesses may protect the public and, at a minimum:

(i) if the offender is also a violent offender, the department of justice shall and the registration agency may disseminate to the victim and the public:

(A) the offender's name; and

(B) the offenses for which the offender is required to register under this part;

(ii) if ~~an~~ a sexual offender was given a level 1 designation under 46-23-509, the department of justice shall and the registration agency may disseminate to the victim and the public:

(A) the offender's address;

(B) the name, photograph, and physical description of the offender;

(C) the offender's date of birth; ~~and~~

(D) the offenses for which the offender is required to register under this part;

(E) the offender's employer address; and

(F) the offender's postsecondary school address.

(iii) if ~~an~~ a sexual offender was given a level 1 designation and committed an offense against a minor or was given a level 2 designation under 46-23-509, the department of justice shall and the registration agency may disseminate to the victim and the public:

(A) the offender's address;

(B) the type of victim targeted by the offense;

(C) the name, photograph, and physical description of the offender;

(D) the offender's date of birth;

(E) the license plate number and a description of any motor vehicle owned or operated by the offender;

(F) the offenses for which the offender is required to register under this part; ~~and~~

(G) the offender's employer address;

(H) the offender's postsecondary school address; and

~~(G)~~(I) any conditions imposed by the court upon the offender for the safety of the public; and

(iv) if ~~an~~ a sexual offender was given a level 3 designation under 46-23-509, the department of justice and the registration agency shall give the victim and the public notification that includes the information contained in subsection (1)(b)(iii). The notification must also include the date of the offender's release from confinement or, if not confined, the date the offender was sentenced, with a notation that the offender was not confined, and must include the community in which the offense occurred.

(c) prior to release of information under subsection (1)(b), a registration agency may, in its sole

discretion, request an in camera review by a district court of the determination by the registration agency under subsection (1)(b). The court shall review a request under this subsection (1)(c) and shall, as soon as possible, render its opinion so that release of the information is not delayed beyond release of the offender from confinement.

(2) The identity of a victim of an offense for which registration is required under this part may not be released by a registration agency without the permission of the victim.

(3) Dissemination to the public of information allowed or required by this section may be done by newspaper, paper flyers, the internet, or any other media determined by the disseminating entity. In determining the method of dissemination, the disseminating entity should consider the level of risk posed by the offender to the public.

(4) The department of justice shall develop a model community notification policy to assist registration agencies in implementing the dissemination provisions of this section."

Section 6. Section 46-23-509, MCA, is amended to read:

"**46-23-509. Psychosexual evaluations and sexual offender designations.** (1) Prior to sentencing of a person convicted of a sexual offense, a sexual offender evaluator who has a license endorsement as provided for in 37-1-139 shall provide the court with a psychosexual evaluation report recommending one of the following levels of designation for the offender:

(a) level 1, the risk of a repeat sexual offense is low;

(b) level 2, the risk of a repeat sexual offense is moderate;

(c) level 3, the risk of a repeat sexual offense is high, there is a threat to public safety, and the sexual offender evaluator believes that the offender is a sexually violent predator.

(2) Upon sentencing the offender, the court shall:

(a) review the psychosexual evaluation report, any statement by a victim, and any statement by the offender;

(b) designate the offender as level 1, 2, or 3; and

(c) designate a level 3 offender as a sexually violent predator.

(3) An offender designated as a level 2 offender or given a level designation by another state, the

federal government, or the department under subsection (5) that is determined by the court to be similar to level 2 may petition the sentencing court or the district court for the judicial district in which the offender resides to change the offender's designation if the offender has enrolled in and successfully completed the treatment phase of either the prison's sexual offender treatment program or of an equivalent program approved by the department. After considering the petition, the court may change the offender's risk level designation if the court finds by clear and convincing evidence that the offender's risk of committing a repeat sexual offense has changed since the time sentence was imposed. The court shall impose one of the three risk levels specified in this section.

(4) If, at the time of sentencing, the sentencing judge did not apply a level designation to a sexual offender who is required to register under this part and who was sentenced prior to October 1, 1997, the department shall designate the offender as level 1, 2, or 3 when the offender is released from confinement.

(5) If an offense is covered by ~~46-23-502(9)(b)~~ 46-23-502(10)(g), the offender registers under 46-23-504(1)(c), and the offender was given a risk level designation after conviction by another state or the federal government, the department of justice may give the offender the risk level designation assigned by the other state or the federal government. All offenders convicted in another state or by the federal government who are not currently under the supervision of the department or the youth court and were not given a risk level designation after conviction shall provide to the department of justice all prior risk assessments and psychosexual evaluations done to evaluate the offender's risk to reoffend. Any offender without a risk assessment or psychosexual evaluation shall, at the offender's expense, undergo a psychosexual evaluation with a sexual offender evaluator who has a license endorsement as provided for in 37-1-139. The results of the psychosexual evaluation may be requested by the attorney general or a county attorney for purposes of petitioning a district court to assign a risk level designation.

(6) The lack of a fixed residence is a factor that may be considered by the sentencing court or by the department in determining the risk level to be assigned to an offender pursuant to this section.

(7) Upon obtaining information that indicates that a sexual offender who is required to register under this part does not have a level 1, 2, or 3 designation, the offender, the attorney general, the county attorney that prosecuted the offender and obtained a conviction for a sexual offense, or the county attorney for the county in which the offender resides may, at any time, petition the district court that sentenced the offender

for a sexual offense or the district court for the judicial district in which the offender resides to designate the offender as level 1, 2, or 3. Upon the filing of the petition, the court may order a psychosexual evaluation report at the petitioner's expense, or order that the results of all prior psychosexual evaluations be provided to all parties. The court shall provide the offender with an opportunity for a hearing prior to designating the offender. The petitioner shall provide the offender, the attorney general, and the county attorney that prosecuted the offender with notice of the petition and notice of the hearing. As provided in 46-23-506(2)(d), petitions for relief from registration under this part must be filed in the appropriate Montana district court. Orders or other documents granting relief from registration requirements that originated in other jurisdictions are not valid in Montana."

Section 7. Coordination instruction. If both House Bill No. 112 and [this act] are passed and approved and both contain a section that amends 46-23-502, then the sections that amend 46-23-502 are void and 46-23-502 must be amended as follows:

"**46-23-502. Definitions.** As used in Title 45, chapter 5, part 3 and parts 5 through 7, 46-18-255, and this part, the following definitions apply:

(1) "Department" means the department of corrections provided for in 2-15-2301.

(2) "Foreign offenses" means a conviction for a sexual offense involving any of the conduct listed in this section that was obtained under the laws of Canada, the United Kingdom, Australia, or New Zealand, or under the laws of any foreign country when the United States department of state, in its country reports on human rights practices, has concluded that an independent judiciary generally or vigorously enforced the right to a fair trial in that country during the year in which the conviction was obtained.

~~(2)~~(3) "Mental abnormality" means a congenital or acquired condition that affects the mental, emotional, or volitional capacity of a person in a manner that predisposes the person to the commission of one or more sexual offenses to a degree that makes the person a menace to the health and safety of other persons.

~~(3)~~(4) "Municipality" means an entity that has incorporated as a city or town.

~~(4)~~(5) "Personality disorder" means a personality disorder as defined in the fourth edition of the Diagnostic and Statistical Manual of Mental Disorders adopted by the American psychiatric association.

~~(5)~~(6) "Predatory sexual offense" means a sexual offense committed against a stranger or against a

person with whom a relationship has been established or furthered for the primary purpose of victimization.

~~(6)~~(7) "Registration agency" means:

(a) if the offender resides in a municipality, the police department of that municipality; or

(b) if the offender resides in a place other than a municipality, the sheriff's office of the county in which the offender resides.

~~(7)~~(8) (a) "Residence" means the location at which a person regularly resides, regardless of the number of days or nights spent at that location, that can be located by a street address, including a house, apartment building, motel, hotel, or recreational or other vehicle.

(b) The term does not mean a homeless shelter.

~~(8)~~(9) "Sexual offender evaluator" means a person qualified under rules established by the department to conduct psychosexual evaluations of sexual offenders and sexually violent predators.

~~(9)~~(10) (a) "Sexual offense" means~~:~~ any violation, attempt, solicitation, or conspiracy to commit a violation, or flight after the attempt or commission of the following:

~~(a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-301 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-302 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-303 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-502 (if the offender is a professional licensed under Title 37 and commits the offense during any treatment, consultation, interview, or evaluation of a person's physical or mental condition, ailment, disease, or injury), 45-5-502 (3) (if the victim is less than 16 years of age and the offender is 3 or more years older than the victim), 45-5-503 (1), (3), or (4), 45-5-504 (2)(c), 45-5-504 (3) (if the victim is less than 16 years of age and the offender is 4 or more years older than the victim), 45-5-507 (if the victim is less than 18 years of age and the offender is 3 or more years older than the victim or if the victim is 12 years of age or younger and the offender is 18 years of age or older at the time of the offense), 45-5-508, 45-5-601 (3), 45-5-602 (3), 45-5-603 (1)(b), (2)(b), or (2)(c), 45-5-625, 45-5-704, or 45-5-705 ; or~~

(i) 45-5-301, Unlawful restraint, if the victim is less than 18 years of age and the offender is not a parent of the victim;

(ii) 45-5-302, Kidnapping, if the victim is less than 18 years of age and the offender is not a parent of the victim;

(iii) 45-5-303, Aggravated kidnapping, if the victim is less than 18 years of age and the offender is not a parent of the victim;

(iv) 45-5-502(2)(c) and (3), Sexual assault;

(v) 45-5-503, Sexual intercourse without consent;

(vi) 45-5-504(2)(c) and (3), Indecent exposure;

(vii) 45-5-507, Incest, if the victim is less than 18 years of age and the offender is 3 or more years older than the victim, or if the victim is 12 years of age or younger and the offender is 18 years of age or older at the time of the offense;

(viii) 45-5-508, Aggravated sexual intercourse without consent;

(ix) 45-5-601(2)(b) and (3), Prostitution;

(x) 45-5-622(2)(b)(ii), Endangering the welfare of children;

(xi) 45-5-625, Sexual abuse of children;

(xii) 45-5-627(1)(a), Ritual abuse of a minor;

(xiii) 45-5-705, Patronizing a victim of sex trafficking;

(xiv) 45-5-706, Aggravated sex trafficking;

(xv) [section 19 of House Bill No. 112], Child sex trafficking; or

~~(b)~~(xvi) any violation of a law of another state, a tribal government, ~~or~~ the federal government, or the military or a foreign entity that is reasonably equivalent to a violation listed in subsection ~~(9)(a)~~ (10)(a)(i) through (10)(a)(xv) or for which the offender was required to register as a sexual offender after an adjudication or conviction.

(b) The term does not include the exceptions provided for in 45-5-501, 45-5-502, and 45-5-503.

~~(10)~~(11) "Sexual or violent offender" means a person who has been convicted of or, in youth court, found to have committed or been adjudicated for a sexual or violent offense.

~~(11)~~(12) "Sexually violent predator" means a person who:

(a) has been convicted of or, in youth court, found to have committed or been adjudicated for a sexual offense and who suffers from a mental abnormality or a personality disorder that makes the person likely to engage in predatory sexual offenses; or

(b) has been convicted of a sexual offense against a victim 12 years of age or younger and the

offender is 18 years of age or older.

~~(12)~~(13) "Transient" means an offender who has no residence.

~~(13)~~(14) "Violent offense" means:

(a) any violation of or attempt, solicitation, or conspiracy to commit a violation of;

(i) 45-5-102, Deliberate homicide;

(ii) 45-5-103, Mitigated deliberate homicide;

(iii) 45-5-202, Aggravated assault;

(iv) 45-5-206 (third or subsequent offense), Partner or family member assault;

(v) 45-5-210(1)(b), (1)(c), or (1)(d), Assault on a peace officer or judicial officer;

(vi) 45-5-212, Assault on a minor;

(vii) 45-5-213, Assault with a weapon;

(viii) 45-5-215, Strangulation of a partner or family member;

(ix) 45-5-302 (if the victim is not a minor), Kidnapping;

(x) 45-5-303 (if the victim is not a minor), Aggravated kidnapping;

(xi) 45-5-401, Robbery;

(xii) 45-6-103, Arson; or

(xiii) 45-9-132; Operation of unlawful clandestine laboratory; or

(b) any violation of a law of another state, a tribal government, ~~or~~ the federal government, or the military or a foreign entity reasonably equivalent to a violation listed in subsection ~~(13)(a)~~ (14)(a)."

Section 8. Coordination instruction. (1) If House Bill No. 112, House Bill No. 525, and [this act] are passed and approved and all three contain a section that amends 46-23-502, then the section in House Bill No. 525 that amends 46-23-502 is void and [section 7 of this act], amending 46-23-502, must be further amended so that 46-23-502(10)(a)(iv) reads:

"(iv) 45-5-502(2)(c), (3), and (4), Sexual assault;".

(2) If House Bill No. 112 is not passed and approved and House Bill No. 525 and [this act] are passed and approved, then the section in House Bill No. 525 that amends 46-23-502 is void and [section 1 of this act], amending 46-23-502, must be further amended so that 46-23-502(10)(a)(iv) reads:

"(iv) 45-5-502(1), (2)(c), (3), and (4), Sexual assault;".

Section 9. Coordination instruction. (1) If House Bill No. 112, Senate Bill No. 345, and [this act] are passed and approved and all three contain a section that amends 46-23-502, then the section in Senate Bill No. 345 that amends 46-23-502 is void and [section 7 of this act], amending 46-23-502, must be further amended so that the definition of "sexual offense" in 46-23-502(10)(a) includes the following offense:

45-8-218, Deviate sexual conduct.

(2) If House Bill No. 112 is not passed and approved and Senate Bill No. 345 and [this act] are passed and approved, then the section in Senate Bill No. 345 that amends 46-23-502 is void and [section 1 of this act], amending 46-23-502, must be further amended so that the definition of "sexual offense" in 46-23-502(10)(a) includes the following offense:

45-8-218, Deviate sexual conduct.

- END -

I hereby certify that the within bill,

SB 38, originated in the Senate.

_____

Secretary of the Senate

_____

President of the Senate

Signed this _____day

of _____, 2023.

_____

Speaker of the House

Signed this _____day
of _____, 2023.

SENATE BILL NO. 38

INTRODUCED BY B. BROWN

BY REQUEST OF THE DEPARTMENT OF JUSTICE

AN ACT GENERALLY REVISING STATUTES RELATED TO LEVEL DESIGNATIONS FOR SEXUAL OFFENDERS; PROVIDING DEFINITIONS; REQUIRING ADDITIONAL INFORMATION FROM OFFENDERS REGARDING ELECTRONIC AND COMMUNICATIONS DATA AND PROFESSIONAL LICENSES; REQUIRING NOTICE WHEN AN OFFENDER IS LEAVING THE STATE; PROVIDING OPPORTUNITIES FOR CERTAIN OFFENDERS TO BE REMOVED FROM THE REGISTRY; PROVIDING NOTICE REQUIREMENTS FOR PSYCHOSEXUAL EVALUATIONS; AND AMENDING SECTIONS 46-23-502, 46-23-504, 46-23-505, 46-23-506, 46-23-508, AND 46-23-509, MCA.